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ABSTRACT

The Federal courts, state legislatures, local districts, and building administrators, as well as professional associations, have given a great deal of attention in recent years to the legal implications involved in helping others. Because the laws regarding counseling practices vary so much from state to state, a discussion of specific legal guidelines to which all counselors should adhere is not possible. However, certain legal principles have been established which should be part of the basic knowledge of any professional in the helping services. This publication seeks to heighten the awareness of counselors as to the legal implications of what they do. The major areas of focus include: (1) the constitutional principles of due process and other student rights; (2) the principles of confidentiality and privacy rights; (3) the guiding principles of an ethical code and (4) the counselor's dilemma in serving the often conflicting demands of students, parents and the system. (Author/YRJ)

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LEGAL CONCERNS FOR COUNSELORS

by
Daniel H. Naaman

Edited and with an Introduction
by
Garry R. Walz and Libby Benjamin

Developed by
ERIC Counseling and Personnel Services Information Center
in collaboration with
American School Counselor Association

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PREFACE

The American School Counselor Association is pleased to have cooperated with the ERIC Counseling and Personnel Services Information Center to produce a series of monographs on subjects about which school counselors are expressing concern. Through regional meetings, groups of counselors identified topics they deemed to be of high priority, and five were selected for the monograph series. The series focuses on broadening the knowledge and enhancing skills of school counselors in a very practical sense.

I hope these monographs will assist counselors and counselor educators to meet the needs of students more effectively. After reading the monographs, counselors may wish to encourage ASCA to develop additional publications on other important topics.

I wish to express my thanks to the authors, Donald G. Hays, Helen F. Kristal, A. William Larson, Robert D. Myrick, and Daniel H. Nasman for the quality of their manuscripts. Also, my special appreciation to Garry R. Walz and to Libby Benjamin for initiating and sponsoring the project, and reviewing and editing all manuscripts.

It is my sincere hope that this series of monographs will be a valuable contribution to the work of school counselors, counselor educators, and other helping professionals.

Carol Reynolds
Interprofessional Relations Coordinator
American School Counselor Association

INTRODUCTION

New populations to serve, greater demands to demonstrate professional worth, thorny legal questions to resolve, and the need to acquire new skills are just some of the pressures being experienced by members of the helping services. The demands for broadened services of counselors and other helping professionals have increased notably in recent years. The support for those services, however, has remained constant or diminished. Therefore, counselors are seeking more impactful strategies to deal with this paradox of more to do and less to do with.

While the need for new approaches and skills clearly exists, counselors are plagued by the double-headed problem of resources which are either difficult to obtain or too theoretical and abstract to be of practical utility. A high level discussion of child abuse has little to offer the hard-pressed counselor faced with helping a tormented child.

Our goal in creating this monograph series was to assist counselors to acquire practical and immediately adoptable techniques and procedures for dealing with current or emerging concerns. Initial discussions with the then ASCA president, Don Severson, and later with the ASCA Governing Board and Carol Reynolds, led to our identifying and prioritizing areas toward which we should focus our efforts. With help from ASCA, authors were selected who were highly knowledgeable about the functions of counselors in these chosen areas. Theirs was the task of culling from the large reservoir of accumulated knowledge and their own personal know-how those ideas and practices which would best serve pressed, if

not embattled, counselors.

It is our judgment that the process has been successful. Five monographs have been developed which deal with highly prioritized counselor needs and provide direct assistance to counselors. Singly or as a series, they can help counselors to heighten their awareness and upgrade their skills.

The titles of the five monographs in this series are: Needs Assessment! Who Needs It?, The Role of the School in Child Abuse and Neglect, Student Rights: Relevant Aspects for Guidance Counselors, Consultation as a Counselor Intervention, and Legal Concerns for Counselors. In all of the manuscripts the authors provide a brief overview of the historical background of the subject, speak to current trends and developments, offer a glimpse of directions for the future, and, most important, emphasize new roles for counselors and strategies counselors can use to be more effective in their work. Readers will also find extensive lists of helpful resources to which they can refer for more information.

The rewards for us in working on this project have been many. The support, interest, and cooperation of Don Severson, Carol Reynolds, and Norm Creange have been all that we could have asked for. The authors, while not always agreeing totally with our ideas, have been most responsive in incorporating our suggestions into the texts. Perhaps most of all, we feel rewarded by that certain look of discovery and pleasure evident in the faces of those who have reviewed the manuscripts. Like us, they experienced the joy of knowing that here at last was something

that could really make a difference in what they do. That pleases us immensely! Because making a difference is, after all, what we and ERIC/CAPS are all about.

G.R.W.
L.B.

ABOUT THIS MONOGRAPH

The Federal courts, state legislatures, local districts, and building administrators, as well as professional associations, have given a great deal of attention in recent years to the legal implications involved in helping others. Because the laws regarding counseling practices vary so much from state to state, a discussion of specific legal guidelines to which all counselors should adhere is well-nigh impossible. However, certain legal principles have been established which should be part of the basic knowledge of any professional in the helping services.

This publication seeks to heighten the awareness of counselors as to the legal implications of what they do. Counselors will have to seek local answers to specific questions. But if reading this monograph prods them to pause before acting, encourages them to search out established policies and guidelines before proceeding with their tasks, brings those questions to consciousness, and impels them to work toward changing what should be changed, it will have accomplished its purpose.

ABOUT THE AUTHOR

Dan Nasman is a guidance coordinator for the San Diego County Department of Education in California. His major responsibilities involve working with nearly fifty school districts in the development of policies and procedures pertaining to students' rights. He has worked in counseling and guidance since 1959 as a district-level administrator, as a consultant, and as a counselor. His undergraduate work was at Seattle Pacific College. Two NDEA institutes led to his Master's degree from Washington State University. In addition, he attended NDEA institutes at the University of Southern California and the University of Rochester. He is completing his doctoral work at the University of Pittsburgh, where he was a T.T.T. fellow.

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To Lee Nasman for the time I constantly steal from her to pursue the dark corners of professional concern and to Libby Benjamin for her patience and encouragement in the preparation of the monograph.

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LEGAL CONCERNS FOR COUNSELORS

Daniel H. Nasman

One of the major difficulties encountered in preparing any statement regarding the legal implications of counseling and guidance is the wide range of differences among the laws of the various states. The confidentiality of a counselor's notes, for instance, varies from privileged communication in some states to mandatory disclosure in others. On the other hand, principles have been established by Federal courts which intervene the U.S. Constitution on behalf of students, counselors, parents and school boards. In addition, the ASCA Code of Ethics encourages a uniformity of practice which can be addressed in this monograph (see Appendix 1).

Perhaps the significant purposes of any statement on legal concerns for counselors can be to raise their awareness in the following areas:

- the constitutional principles of due process and other student rights
- the principles of confidentiality and privacy rights
- the guiding principles of an ethical code
- the counselor's dilemma in serving the often conflicting demands of students, parents and the system.

The author is not an attorney and therefore will offer no legal advice. The purpose of this monograph is to point out to counselors the principles which undergird the law and professional practice, to raise caution flags in those areas where others have fallen unwittingly into

traps, and to help counselors become informed about the questions for which they must find local answers in order to function with greater certainty as to the propriety and legality of their actions.

Finally, it should be noted that there is very little case law involving school counselors. Although several excellent publications contain speculations about the nature of criminal and civil liability for counselors, there is a paucity of substantive court decisions which can act as a guide. The infrequency of such issues, however, does not provide assurance that they will continue to be a rarity. In fact, the trend is toward an increase in the bringing of civil actions against governmental agencies, their officials, and their employees.

The Legal Framework for Pupil Personnel Practices

Educational systems have moved abruptly from tranquil pastures of uninterrupted parenting and policing to battlefields strewn with hidden land mines and unexploded arsenal. Much of this dynamic change results from the increasing complexity of society which, of necessity, becomes more legalistic as it attempts to cope with mounting problems. As each jurisdiction further defines its province, conflict among various authorities begins to develop. Take, for example, the conflict between privacy rights and ethnic surveys. On one hand is the need to measure *de facto* and/or *de jure* discrimination and, on the other, is the pupil's right to have his/her ethnicity an unrecorded fact. Conflicts of this nature occur between agencies from the same jurisdiction--in this case the Office of Civil Rights and the Department of Health, Education,

and Welfare.

Conflicts among jurisdictions are a second source of ambiguity. In California, for instance, the state law permits a school board to establish smoking areas for high school students, but local municipalities may prohibit the possession of tobacco by minors. Or, the state law requires notification to authorities whenever child abuse is suspected, but privacy laws will govern whether the parent is entitled to read the report which was filed.

A third area of significant turmoil is the erosion of the traditional role of the school board. For years boards have stood as legal entities unencumbered by the demands of due process or by any recognition of students' rights. Laws are rapidly changing this protected stance.

Recognition must also be given to a new element which contributes to the legal attacks on schools and, in fact, on all governmental agencies. The ratio of attorneys to population has doubled over the past 15 years, and the overabundance has created many (temporarily) hungry personal injury attorneys who, on a contingency basis, will initiate civil suits requesting damages for "failure to teach a child to read," for "traumas induced by interrogations," for "denying education because of hair length," and even for "litter created by students."

A final element causing the transition is the trend toward "ordered obedience." Initially, private industry and private agencies would continue an unlawful practice--even when it was called to their

attention--until a court order with contempt threats and damage claims mandated a change. The lingering suits regarding pollution are the most evident examples. Later, governmental agencies and persons have pursued a similar course. Federal funds have been administratively impounded in the face of congressional directives, and only through court intervention have agencies been brought to compliance. This attitude of redress through the court rather than through submission to lawful authority is beginning to be felt in the school system. A major difference is that damage claims are most often filed against individuals who work for the district rather than against the institution itself.

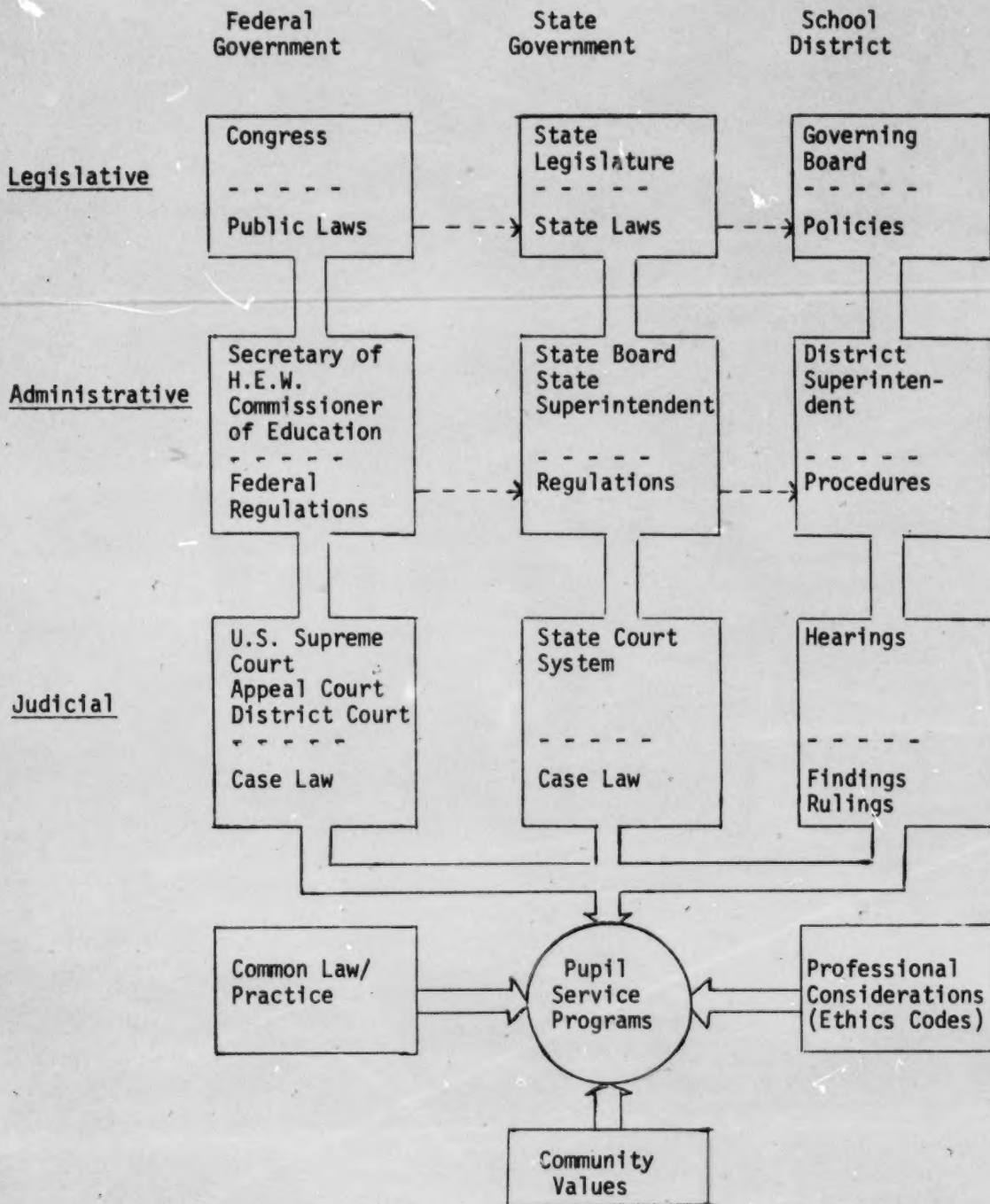
Figure 1 illustrates the variety and interactive nature of the forces which shape the practices of pupil service programs

The major forces, those with inherent legal compulsion, are the Federal, state, and school district jurisdictions. Each has the traditional legislative, administrative (or executive), and judicial function.

The governing board and superintendent are in the difficult position of being least powerful in statutory authority but most influential in determining the conditions of employment and the behavior of employees. Even though they are subordinate to state law, in most instances they are free to make individual choices and determinations where there are vacuums in the law. They can be wrong, unprofessional, or unreasonable, but, in the absence of court direction, arbitrary. The development of case law which has taken

Figure 1.

Forces Shaping the Practices in Pupil Service Programs



away much of their opportunity to be arbitrary will be discussed in greater detail later. Suffice it to point out that nearly all changes in jurisdictional power have been at the expense of the district's power.

The potential conflict of state and Federal laws has been more feared than realized. Because Federal law carries the weight of Federal dollars, whenever conflict might have occurred, the state has acquiesced to the Federal dictate. The Federal court system has also contributed to greater Federal influence by reaffirming the supremacy of the U.S. Constitution as it applies to the rights of individuals.

An interesting contradiction frequently occurs at the Federal level. The laws of Congress have no significant effect until the administrative agency has developed and published regulations. It is not unusual for these Federal regulations to countermand the intent of the law. A bizarre example of this may be found in the early days of the Privacy Rights Act whereby it was permissible to give student names to newspapers although newspapers were not permitted to reveal the names. Some contradictions are accidental, but congressional aides have commonly complained that the bureaus deliberately set aside the major provisions of new legislation.

These legally constituted powers of Federal, state and school board governments can be the most pressing and the most influential constrictions on a counselor's course of conduct. Of an equally critical nature, however, are the influences of prevailing practice--especially when that practice is common law--of community values, and of standards of professional conduct.

In summary, it must be noted that although direct "orders" come from district authority, that authority is subject to the laws of the land--especially as interpreted by the courts. Of no less significance is the demand of the community and of the profession for a course of conduct that provides for the survival of the community in a way most consistent with individual rights and responsibilities.

Historically, community pressures can be the most dictatorial, especially when manifested in the governing board, as well as the most abusive of individual rights to dissent. For that reason, disputes are often carried to the broader arena of Federal jurisdiction for determination of a just final outcome. The resulting decision is then imposed as a condition which limits the action of the community.

Rights of Students

a school (official), who has voluntarily undertaken the task of supervising the operation of the school and the activities of the students, must be held to a standard of conduct based not only on permissible intentions, but also on knowledge of the basic, unquestioned constitutional rights of his charges. (Wood v. Strickland, 420 U.S. 308 [1975])

No discussion of legal issues involving school personnel can begin without full consideration for the rights of students. The immediate reaction of many individuals to a statement regarding student rights is, "But, what about their responsibilities, too!" The truth of the matter is that their rights are inviolate and that their responsibilities, except where spelled out in law, are discretionary. No contingency system exists whereby students earn rights.

Free speech is constitutionally protected; it is not earned through agreeable utterances. Likewise, the right of students in many states to obtain venereal disease treatment or birth control information without parental consent remains in force regardless of habits of promiscuity. (At some time, however, a court could rule that the right of parents to full knowledge and control of their minor children may supersede the right of minor children to use or abuse their bodies as they choose.)

The concept of full constitutional protection for minors is very new. In the middle 1960's, Edward Gault made an obscene telephone call in Arizona. At age 17 he was sentenced to confinement until age 21. In effect, he received a three-months sentence for each offending word. His appeal to the U.S. Supreme Court set the precedent for constitutional guarantees of due process for minors (Gault, 387 U.S. 1 [1967]).

It should be noted parenthetically that prior to that ruling many states could arbitrarily assume custody of a child in criminal matters and punish or treat without regard to fair hearings, appeals, and the other trappings available to adults involved in criminal proceedings. Vestiges of this attitude still exist today. While flogging or other physical punishment cannot be used against adult felons, schools still continue to use corporal punishment. (A caveat is warranted here to the effect that in those districts where corporal punishment is prohibited, little attention has been given to punishments other than paddling. In fact, running laps, doing pushups, or standing at rigid attention all constitute corporal punishment if they are administered

as disciplinary measures.)

Prior to the Gault decision, minors were non-persons before the law. Once they became "persons" in 1967, the courts became a new force in expanding the rights of students. In 1969, Tinker v. Des Moines School District (393 U.S. 503 [1969]) established the First Amendment's rights of free speech in the classroom by overruling suspensions based on the wearing of protest armbands. In the opinion written for this decision, Justice Fostas stated, "First Amendment rights, applied in light of the special characteristics of the school environment, are available to teachers and students. It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate."

In 1975 the U.S. Supreme Court established two significant landmarks regarding students' rights. In Goss v. Lopez (419 U.S. 565 [1975]) the property right of a student to an education was clearly established by the Federal requirements that it could only be taken away through a proper application of due process. (Subsequent to Goss, the court ruled that a student did not have a property right to participation in an activity.) In Wood v. Strickland the Court established that it is inappropriate for courts to reexamine evidentiary questions regarding school discipline. It also held that a school official who deprives a student of a civil right may be personally liable even though the official may be ignorant of the student's rights. Previously, malice was one of the considerations required for establishing liability. The court did temper its findings with the statement, "A compensatory damages

award will be appropriate only if the school board member has acted with such an impermissible motivation or with such disregard of the student's clearly established constitutional rights that his action cannot reasonably be characterized as being in good faith." In essence, the Court is saying that if you behave recklessly regarding students' rights, you might be liable for damages.

The second element of Wood v. Strickland was the issue of judicial review. In that sense the Court said that it would not second-guess the discretion and judgment of school administrators even though they might be lacking in compassion and wisdom so long as the decisions do not violate constitutional guarantees.

The Goss v. Lopez decision had far-reaching implications in that it set Federal criteria of due process in suspensions and expulsions. Students must be given some kind of notice of the charges and some kind of hearing to present their side of the story. (The obvious exceptions involving immediate safety or similar emergencies are permitted.)

Due process is essentially a procedure involving fairness and reasonableness. As Justice Holmes pointed out in 1909,

There is no rule of universal application concerning the right of an individual to present at a hearing prior to the institution of action affecting his substantial rights. What is due process depends on circumstances. It varies with the subject matter and the necessities of the situation.

It is easier to describe a denial of due process. For example, an obvious denial of due process is to suspend or expel a child from

school without any grounds at all for doing so.

Districts are frequently tempted to resort to elaborate procedures in the belief that these will insure due process. But they should not rely solely upon processes because these can be traps for the unwary. The matter of due process is much more complex. The mere existence of elaborate procedures for notice and the opportunity for a hearing and the conduct of the hearing will not suffice to validate an otherwise invalid suspension or expulsion. Bluntly stated, a slavish adherence to inflexible procedures is in and of itself a denial of due process. School disciplinarians will therefore do well to heed the warning sounded by the U.S. District Court for the Northern District of Florida in the 1963 case of *Due v. Florida A & M University* (233 Fed. Sup. 396): "(A) foisted system of rigid procedure can become so ritualistic, dogmatic, and impractical as to itself be a denial of due process." Emphasizing that mere procedural form masquerading under the guise of "due process" will not suffice, the California Supreme Court flatly stated: "Due process is not interested in mere technical formalism. It is the substance that is determinative of whether due process has been afforded."

If there were doubt before, the message is now clear that the U.S. Supreme Court meant what it said in Tinker in 1969 when it bluntly stated:

In our system, state-operated schools may not be enclaves of totalitarianism. School officials do not possess absolute authority over their students. Students in school as well as out of school are 'persons' under our Constitution.

They are possessed of fundamental rights which the State must respect, just as they themselves must respect their obligations to the State.

The courts have long recognized and consistently approved the traditional historical concept that in the academic community there are important reasons why greater freedoms and greater restrictions may prevail than in society at large and that the subtle fixing of these limits should, in large measure, be left to the educational institution itself.

Counselors can appropriately serve students by having a thorough understanding of due process and by guaranteeing that the due process rights of students are well-protected within the system. The elements of due process transcend local jurisdictions in those matters involving the right to an education, free speech, property rights, and a number of other areas which are being added by Federal Court actions. This interposition of the U.S. Constitution on behalf of students' claims has destroyed the idiosyncratic nature of local school boards or municipalities which were wont to proscribe student behavior in very narrow terms. A review of district censorship of student newspapers and district prohibitions against unpopular political opinions would demonstrate how far we have moved toward the Federal determination of the student's freedom--and the Federal courts have granted much more than districts have chosen to give.

Even in areas where there is no clear Federal ruling, school districts have become more lenient in their acceptance of divergent

behavior. Districts must frequently wish that they could recoup all the time and money they wasted enforcing grooming standards that have now become passe', even among the very people who devoted their energy toward conformity in the past decade.

In summary, it should be stated that the counselor, perhaps above all school officials, should have a knowledge of, and interest in, students' rights. Policies protecting non-discrimination, religious freedom, free speech, and due process are all appropriate areas of counselor advocacy. More important, the counselor must guard against illegal or unethical intrusions into these provinces. Counselors need a more than casual acquaintance with state and Federal law--both for the protection of the students' rights and as a safeguard against personal liability. A simple way of constantly checking the reasonableness of an action is hypothetically to apply the situation to a professional staff member rather than to the student. Would the district immediately suspend a teacher for profanity? For hair style? Would it curtail the right of the teacher to express opinions outside the classroom? If students are considered to have the same rights as teachers, the district is probably going to stay out of litigation.

Obligations of the Professional

"Mr. Snyder, if I tell you something, will you promise not to tell anyone?"

"Mrs. Goodyear, can you help me get an abortion so that my parents won't know?"

"Miss DeWilde, can I leave this pot in your desk while I go to physical education class?"

"Mr. Herrman, I'm Officer Gallant and I'd like to see Sam Powers for questioning."

"Ms. Prentice, my dad has been hitting on my brother for three days."

"Mr. Lander, how come you sent a bad report to my probation officer?"

"Miss McGill, Dr. Gustafson has asked me to prepare a report on Mel Blodgett's classroom effectiveness. Will you help me?"

. . . and so on, until the inevitable, "Can you counselors tell me what's going on around here?" from the harried administrator.

Counselors' responses to the several queries are going to be varied, and all of them should be qualified responses. The answers will reflect the counselors' knowledge and accord with the law, with a code of ethics, and with the district's expectations.

The previous section briefly discussed some aspects of student rights. However, the laws and courts aside, much of a counselor's behavior will be governed by ethics and job requirements--and those two are not always easy companions. Many times counselors will attempt to rationalize their behavior under the rubric of "serving the best interests of the counselee." Unfortunately, this is not easily determined and frequently conflicts with the needs of the system or the rights of the parents. One issue that is frequently raised is the parents' invocation of the schools' responsibility to share

information pertaining to their child.

For example, a 17-year-old girl discusses her pregnancy with the counselor and requests abortion information. The counselor's response can range from alerting the parents to the situation, rejecting the interview as being inappropriate to the school counselor's role, referring the client to an agency as permitted under state law, taking an active part in arranging a visit by the student to an agency, or arranging a contact with a legal or an illegal abortion clinic. In every circumstance, someone will challenge the propriety of the decision. The counselee will be angered and feel betrayed if the parents are informed. Other counselors may view with professional jaundice the counselor who refuses to continue the counseling interview whatever the nature of the content. The parents will be miffed at any action that excludes them from the decision-making process. The police will take exception to those situations which propose an illegal solution. And the district administration will look with disfavor upon any solution which puts the administration in an unfavorable light.

So what is the counselor to do? More important, what will the counselor use to guide whatever decision is made?

Before launching into the dilemmas which befall the school counselor and which touch upon such topics as *in loco parentis*, confidentiality, privilege, privacy, codes of ethics and job requirements, it is germane to explore the role of the counselor

as a professional.

In its infancy, counseling was essentially vocational guidance designed to match the needs of the labor market with the skills of students. In addition, schools held an unquestioned position as the provider of education to those who sought it and who conformed to the demands of the school.

By the 1960's, the mental health movement created a demand that schools attend to the mental and emotional adjustment of students. The supply of school psychologists and counseling psychologists was not nearly sufficient to meet the personnel needs of the districts. Thus, through an evolutionary process, counselors came to assume the role of quasi-psychotherapists and began to define their professional roles in a way that was significantly different from the way they began. At the same time counselors began to assume the prerogatives of psychologists as they existed under the law. However, the law has been slow to extend the protections of privileged communication and the authority of expert witness to the school counselor.

The initial concern is the question of whether or not counseling is a profession. Bernard Barber (1963) insists on "a body of esoteric knowledge; an orientation toward community rather than self-interest; a high degree of self-regulation; and a system of rewards in terms of work achievement symbols" as requisites for professional status. His lofty and somewhat subjective criteria can be compared with Ernst Greenwood's (1972) demands for systematic theory, authority, community sanction, ethical codes and a culture (i.e., formal and informal

groups necessary for the profession's maintenance).

The degree to which counseling is a profession, particularly in the eyes of the court, will not be resolved within this monograph. Nor is it necessary that it be. Among counselors disagreement continues as to the definition of counseling. What is important, however, is the need for counselors to be consistent in self-attribution of professionalism and adherence to an ethical code. Unfortunately, elements of the law run counter to the ethical requirements. The most glaring area is confidentiality.

Confidentiality

Although the Privileged Communication Committee of ASCA reported in 1974 that 18 states had adopted laws covering communication between school counselors and their counselees, generally state laws provide very limited or very specific qualifications for confidentiality. Some provide immunity from prosecution for testimony; others restrict the protection to drug counseling only; and yet others provide for parent access as well as parent control over a release from confidentiality.

To understand the issue of privileged communication, it must be emphasized that it is the patient/client who holds the privilege, and the waiver of the privilege is the sole prerogative of the patient/client. In addition, once the privilege is waived and the information is shared, the privilege no longer exists. For instance, a psychiatrist in private practice would have to obtain a release from the client to

provide confidential information to a school district (for a minor, the authorization of the parent is normally obtained). Once the information is in the school file, it is no longer privileged communication but, in fact, falls under the provisions of the Federal Educational Rights and Privacy Act (FERPA) which governs access and privacy.

A dilemma occurs when the psychiatrist's statement includes sensitive references to the parents. Under FERPA the parents can thus read information which was not available to them in the psychiatrist's office. For this reason it is the school's responsibility to inform private practitioners of access rights when they request the release of confidential information.

In the school setting, the status of counselor confidentiality is quite obscure. Mainly, this situation is the result of two unresolved principles: the failure of state legislatures to legitimize counseling as a profession, and the degree to which the counseling relationship in the school setting is psychotherapeutic.

The issue is compounded by the Federal regulations which specifically exempt "treatment records" from disclosure only if the student has attained age 18 or is attending an institution of post-secondary education. Desk drawer notes neither revealed nor available to anyone other than the maker are exempt from disclosure under FERPA--although some state laws might mandate their accessibility to parents.

Richard Robinson (1971), on the basis of his study in 1973, concluded:

4

1. Public school guidance counseling is emerging as a profession.

2. Few public school guidance counselors are legitimized as professionals at the state level.

3. A need exists for a common definition regarding role, functions and duties of public school guidance counselors before state legislation is attempted.

4. Current state statutes which legitimize the role and functions of public school guidance counselors are inconsistent in scope.

5. There is a trend in state legislation to provide statutory enactments for privileged communication and breach of confidentiality for public school guidance counselors and their clients.

6. Court decisions provide no consistent pattern in defining the legal status of public school guidance counselors.

There are significant exceptions to claims of privilege. A significant ruling went against the University of California when Tarasoff successfully sued the regents for the failure of a University psychologist to warn Tarasoff's daughter that the psychologist's client had identified her as an intended victim. The therapist had informed local law enforcement personnel, but his action did not prevent the client's subsequently killing the victim. The court ruled that the therapist was required to notify the victim and that no privilege existed--thus, the therapist would not have been liable for a violation of confidence.

In another case a mother (who actually holds the privilege for a dependent child) claimed privilege to prevent a physician's testimony. The court ruled that where the welfare or interest of the minor is not protected, the parent could not claim privilege nor could the parent waive privilege if the child's welfare would be endangered.

To summarize succinctly privileged communication for school counselors is an impossibility, but the following statements can provide some general clarification:

1. Privileged communication is a privilege held by the patient/client, and the professional is obligated to respect the privilege except in specified situations.

2. The existence of privilege for school counselors is problematical. Most states do not recognize a protected "school counselor-student" relationship, and most likely there never will be a statutory or common-law relationship which will permit a non-medical school person from totally withholding personal information from parents or courts.

3. Courts have recognized that there are circumstances in which a parent might not act in the best interest of a child and that the parent can neither waive nor claim privilege which is held by the child in such circumstances.

4. If the professional knows that the client is a danger to self or to a third person, there is no privilege, and the professional is required to notify authorities and the intended victim.

5. If the client is young and the professional has reasonable

cause to believe the client has been the victim of a crime, there is no privilege.

6. If privilege is claimed on the basis of a psychotherapist-patient relationship, the communication is presumed to be in confidence and the burden of proof must be borne by the opponent of the claim of privilege.

What to do then in the face of such confusion and ambiguity? Most important is an understanding of the implications of state law and related court cases. Second, the policy and procedures of the school district must be clearly examined for identification of those areas where the administration believes it can require the counselor to provide information which a student has shared in counseling sessions.

After determining the limits available, the counselor should clearly outline them for the counselee. For instance, the counselor should indicate that display of contraband compromises the counselor and could eventually result in the counselor's becoming an accessory. The counselor should also indicate that a court could require testimony which the student might not otherwise freely give. Finally, the counselor must make the decision as to the point to which confidentiality will be claimed. It may be entirely appropriate to resist disclosure until a court orders the counselor to testify. Through consultation with attorneys, it is frequently possible to have the testimony set aside as hearsay.

The important safeguard in avoiding lawsuits regarding confi-

dentality is to reveal information only to persons who appear to be entitled to receive it.

All of the discussion above has related to the counselor-student relationship. However, it should be noted that the "client" may, in fact, be other staff members for whom it is the district's policy to provide counseling services as a part of the counselor's duties.

Privacy Rights

The other side of the confidentiality issue is the privacy right which accrued to student records when FERPA was enacted in 1974. The Federal law is not mandatory, nor does it pre-empt state law. It exists as a part of the contractual arrangement between districts and the Department of Health, Education, and Welfare. If a district fails to abide by FERPA and its administrative regulations, the district forfeits its claim to Federal funds. Two important statements might clarify the relationship between state laws and FERPA. If the state laws are more restrictive, the state and local policies must be brought into compliance. (The exception to the latter statement is the FERPA proviso that where access was mandatory under state law in effect on November 19, 1974, the access rights could be retained.)

The Federal law provides for two basic categories of records. The first is directory-type information which is generally non-sensitive data and which can be provided at the district's discretion. Parents, or "eligible students" (those who have attained age 18 or who are attending an institution of post-secondary education), can restrict

the district's disclosure of directory data.

All other records about students, except personal desk drawer or informal notes neither available to nor shared with any other person, are categorized as pupil records. Such records include psychological records, health records, discipline reports, categorical listings of students, teachers' comments, test scores, behavior observations, and all other records maintained by the district. (Again, an exception for medical or psychological treatment records for eligible students should be noted.) Access to records is carefully defined by FERPA. Access without the consent of the parent or eligible student is provided to:

1. Natural parents without regard to custody (unless a court order specifically prohibits access) until a student becomes an eligible student.
2. Natural parents, if an eligible student is a dependent according to IRS standards.
3. An eligible student. (However, state laws can provide for access at an earlier age.)
4. Local school officials, including teachers for a legitimate educational interest.
5. Officials of a school of anticipated or new enrollment.
6. Specified Federal and state officials for audits or compliance reviews.
7. Agencies providing financial aid.
8. State and local officials who specifically mandated access

to information before November 19, 1974.

9. Organizations conducting research studies.

10. Accrediting associations.

11. The court under court order, provided that notification of compliance with the order is provided.

12. Appropriate parties in health and safety emergencies.

Caveat: individual states may require signed consent for many agencies even though FERPA does not; and, conversely, some states may mandate access when FERPA does not. States may, in fact, prohibit access to everyone except parents or eligible students.

13. Persons or agencies for whom written consent has been provided by the parent or eligible student. The consent must specify the records to be disclosed, the purpose of the disclosure, and the party to whom the disclosure may be made. Such specificity essentially precludes blanket release authorizations.

Because the Federal laws and regulations on privacy are fairly complex, some simplified statements may help to clarify major points of concern. Where statement causes the reader to be confused, s/he should refer to the complete rules for clarification. It should be iterated that state laws can qualify aspects of FERPA but cannot change the basic intent. Where FERPA mandates, the institution must comply; where FERPA permits but does not require, the state law may do either. For instance, FERPA mandates access to records by an 18-year-old and the institution cannot modify that requirement. However, a state has the choice of either mandating or prohibiting

access by a 17-year-old.

* All personally identifiable written information maintained by the district must be made available upon request of a parent or eligible student including lists of test scores, health records, etc. Exceptions are directory information which, by definition, is not a pupil record; informal "desk-drawer" notes; separately maintained records of school security police; psychiatric or parents' confidential financial statements.

* No information may flow from student records to security police records or vice versa. A counselor cannot reveal pupil record information to school security personnel unless the security records are available to the parent or eligible student.

* A log must be maintained for each pupil indicating the parties requesting or obtaining pupil information. The log must be accessible only to the parent or eligible student and the district custodian of the record. Parties for whom written consent was granted, local staff access, and parent or eligible student access are not recorded.

* A district may assume, in the absence of contrary evidence, that a parent granting consent for release of information has the authority to do so.

* Recipients of information obtained through written consent must be notified of prohibitions against further disclosure unless they,

too, are provided written authorization. No requirement for a signed agreement against further disclosure exists in Federal regulations.

* Copies of records--at a reasonable fee--must be provided upon request if the student records are transferred to another school or provided to a party outside of the school system. In addition, copies must be provided if failure to provide a copy effectively blocks access. For instance, copies must be provided if it is unreasonable for the parent or eligible student to come to the school to review the record.

* Records may be amended or deleted if the parent or eligible student can demonstrate successfully that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the students. Refusals to amend can be appealed through an impartial hearing procedure. If no changes result from the hearing, a rejoinder may be attached to the disputed information.

* Post-secondary institutions may request but not require a student to waive access rights to confidential letters of recommendation pertaining to admission, employment, or honorary recognition.

* Records developed by physicians, psychiatrists, psychologists, or other recognized professionals in the treatment of eligible students may be exempt from disclosure.

* Timely complaints regarding violations of privacy rights are

investigated by an office and review board of the Department of Health, Education, and Welfare. Institutions have hearing rights and opportunities for correction before funding terminations are invoked.

* Notification requirements essentially include the following:

1. A statement of the right of parents and eligible students to review all personally identifiable information maintained by the district, the right to access to any or all records, and the right to request the removal or correction of information which is inaccurate, misleading, or in violation of a student's right to privacy.
2. Specification of the availability (location) of information (policies) pertaining to:
 - a. The types of pupil records and the types of information they contain;
 - b. Title and address of the official responsible for the maintenance of each type of record, the persons who have access, and the purposes for which they have access;
 - c. District policies for reviewing and expunging records;
 - d. Access rights of parents and students;
 - e. Procedures for challenging the content of records;
 - f. The cost of copies and circumstances under which copies would not be provided;
 - g. Categories of directory information and parties authorized to receive directory information;
 - h. Other rights and requirements. *(FR 99.6 [a] [1])
3. A statement to the effect that parents may file complaints with the Secretary of Health, Education, and Welfare if they believe the district is not in compliance with Federal requirements. (FR 99.6 [a] [2])
4. A statement to the effect that whenever a student enrolls or seeks to enroll at another school, records will be forwarded upon request. (FR 99.34) (This is optional in the notification, but inclusion then obviates the requirement for notification at time of transfer.)

*FR - Federal Regulations of Part II of HEW "Final Rule on Education Rights" as published in the Federal Register June 17, 1976.

5. Specification of information which is categorized as directory information, recipients, and a statement specifying the period of time within which the parent or eligible student may direct the district not to release directory information. (FR 99.37)

Notification should occur in the home language of the pupil.
(FR 99.6 [b])

Notification must be given upon the date of the pupil's initial enrollment and annually thereafter. (FR 99.6)

THE ACCESS, NOTIFICATION, CONSENT AND CHALLENGE RIGHTS OF PARENTS AND STUDENTS TO PUPIL RECORDS

Definitions:

Access - Disclosure of record including the right to receive a copy at a reasonable cost.

Student - Any individual who is, or has been, in attendance at the institution maintaining an educational record.

Minor Student - A student below age 18.

Eligible Student - A student who has attained age 18 or is attending a post-secondary school.

Dependent Student - In accordance with Section 152 of the Internal Revenue Code of 1954.

	<u>Has Access to Record</u>	<u>Receives Notification</u>	<u>Authorizes Release of Record</u>	<u>Challenges Contents of Records</u>
<u>Minor Students</u>				
a) Natural Parent (or Guardian) with custody	Yes	Yes	Yes	Yes
b) Natural Parent without custody	Yes	No	No	No
c) Student below age 18	state option	No	No	No
<u>Eligible Students</u>				
a) Natural Parent (or Guardian) of <u>dependent</u> eligible student	Yes	No	No	No
b) Natural Parent without custody	No ¹	No	No	No
c) Natural Parent of <u>not dependent</u> eligible student	No	No	No	No
d) Eligible student	Yes	Yes	Yes	Yes

1. Unless student is dependent on parent without custody.

The counselor must accept a responsible role in helping the district develop procedures which are protective of the student's right to privacy while at the same time helping the staff develop the skill to include in the records only those items which are accurate, objective, restricted to the competence of the preparer, and clearly appropriate for educational purposes.

If information in the records does not meet such a test, it should be removed in accordance with state laws governing the disposition of student records. Parents or eligible students may request removal or correction of records which are inaccurate, misleading, or otherwise in violation of the student's privacy or other rights.

Again, the parallel between the rights of students and the rights of staff should be drawn. Information collected about an adult by employers, credit bureaus or law enforcement agencies is subject to discovery by that adult. In addition, the agency must provide the names of persons or agencies who requested or received information from the student's records.

Two final points must be made to clarify frequent misunderstandings about FERPA. One relates to the exchange of information with law enforcement and social service agencies which have historically used informal communication procedures to obtain information. Unless the state law in November 1974 specifically required access by such agencies, consent is required before information can be shared.

The second clarification involves access to information which is reported by school personnel without reference to school records.

There is no provision in FERPA which prohibits teachers (or counselors) from reporting their own observations or experiences with a student so long as their information was not obtained from the protected records. The ethical concern, and privileged communication--to the degree that it exists--are the only restrictions upon revealed confidences. In fact, there is no statutory penalty against individuals who violate FERPA, only institutional penalty.

Counselor Liability

A violation of understood confidences between student and counselor could result in civil liabilities on the part of the counselor. (See The Counselor and the Law, Burgum and Anderson, APGA Press, 1975, for an extended presentation of civil liability and possible criminal actions.) The greatest risk may lie in the area of malpractice accusations since the counselor operates in such an undefined area.

Robbins (1973), in his review of malpractice, suggests that counselors be judged by the standards of their professional group. (See Appendices for Ethics Codes of APGA and ASCA.) He further recommends that schools give careful consideration to job descriptions before adopting them, and cautions against counselors' inferring qualifications beyond those possessed. Finally, he warns counselors to provide professional service only within their competencies and to make referrals when a situation requires knowledge or skills that they do not possess.

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Earlier, several hypothetical but not unrealistic questions were posed as examples of those with which counselors must deal daily.

Mr. Snyder can't promise not to tell anyone, but he should know and relate to the counselee the situations where he must tell someone.

Mrs. Goodyear can refer her counselee to someone who will provide abortion information, if it is legal in her state. Unless specifically required by district policy, she would not have to notify the parents; but she should be aware that any routine record of the interview may be subject to discovery and disclosure.

Miss DeWilde should refuse to view contraband unless she is willing either to reveal its existence to proper authorities or run the risk of being charged as an accessory. She also should be certain that she specifies to the counselee the limits of disclosure to which she can go without placing herself or the client in jeopardy.

Officer Gallant can see Sam if he insists, but Mr. Herrman or a school administrator should make immediate effort to delay the interrogation until s/he can notify Sam's parents and give them an opportunity to be present or arrange for counsel.

Ms. Prentice, in nearly every state, would be legally obligated to report suspected child abuse and cannot be held to a claim of privilege.

Unless state law specifically mandated a report to the probation officer, Mr. Lander should have written authorization from the parent

or eligible student. In addition, he should have the student's permission to share information from counseling interviews.

Miss McGill should recognize that her acceptance by teachers is in jeopardy if she evaluates them in any way. The request is inappropriate and should be clearly prohibited in the published job description.

Finally, harried administrators should be familiar with the nature of the counseling relationship and with the ethical and legal guidelines to which counselors adhere. They should be comfortable with the competency, judgment, and professionalism of the staff and able to fend off hostile inquiries by their own commitment to students' rights, to confidentiality, to privacy, and to trust.

To this end a carefully delineated job description must be developed. If a counselor is functioning within the provinces permitted by the district, almost without exception, the district's liability insurance carrier will be obliged to defend the counselor. On the other hand, if the counselor performs tasks outside of the job description, s/he may be in jeopardy of being out of "the deep pocket of the district" for liability coverage.

Summary

The idiosyncratic nature of state laws precludes the making of a definitive statement regarding legal issues in the counseling profession as viewed by the courts and legislatures. Therefore, counselors must take it upon themselves to discover the legal implications of

their claims to privileged communication and of their role in psychotherapy.

Second, counselors must develop a clear understanding of their role in the district and translate that understanding into a formalized job description. The job description should specify minimum competencies and training required for employment. It must include the counselor's separate responsibilities to parents, to students, to staff, and to administrators. And it must specify the kinds of activities in which the counselor may engage (i.e., advising, individual counseling, group counseling, staff consultation, referrals) and the conditions under which the activities must be performed, such as privacy or permission requirements.

Third, counselors should take an active part in development of district policies pertaining to student records--the acquisition (especially from social service agencies), the maintenance, and the release of information. Special attention must be given to procedures whereby information from counseling interviews is released to outside agencies.

Finally, counselors should be actively working toward full acceptance of counseling as a profession. Counselors can consider themselves truly professional only when they adhere to an established ethical code, develop a system of internal governance, and possess and display competencies soundly based on systematic theory.

APPENDICES

1. ASCA Code of Ethics
2. ASCA Principles of Confidentiality
3. ASCA Position Statement on Student Rights:
A Developing Right to Know
4. APGA Ethical Standards
5. ASCA Committee Report: Privileged Communications
6. Bill of Rights for Students

Appendix 1.

ASCA CODE OF ETHICS

Responsibilities of the school counselor stem from these basic premises and basic tenets in the counseling process.

- A. Each person has the right to dignity as a human being
 - 1. without regard to race, sex, religion, color, socio-economic status
 - 2. without regard to the nature and results of behavior, beliefs and inherent characteristics.
- B. Each person has the right to individual self-development.
- C. Each person has the right to self-direction and responsibility for making decisions.
- D. The school counselor, equipped with professional competency, an understanding of the behavioral sciences and philosophical orientation to school and community, performs a unique, distinctive and highly specialized service within the context of the education purpose and structure of the school system. Performance of this rests upon acquired techniques and informed judgment which is an integral part of counseling. Punitive action is not part of the counseling process. The school counselor shall use these skills in endeavoring constantly to insure that the counselee has the afore-mentioned rights and a reasonable amount of the counselor's time.
- E. The ethical conduct of the school counselors will be consistent with the state regulations.
- F. The school counselor may share information gained in the counseling process for essential consultation with those appropriate persons specifically concerned with the counselee. Confidential information may be released only with the consent of the individual except when required by court order.

I. Principal responsibilities of the school counselor to PUPILS

- A. The school counselor
 - 1. has a principal obligation and loyalty to respect each person as an unique individual and to encourage that which permits individual growth and development.
 - 2. must not impose consciously his attitudes and values on the counselee though he is not obligated to keep his attitudes and values from being known.
 - 3. should respect at all times the confidences of the counselee; should the counselee's condition be such as to endanger the health, welfare and/or safety of self or others, the counselor is expected to report this fact to an appropriate responsible person.

4. shall be knowledgeable about the strengths and limitations of tests; will share and interpret test information with the counselee in an accurate, objective and understandable manner to assist the counselee in self-evaluation.
5. shall assist the counselee in understanding the counseling process in order to insure that the persons counseled with will understand how information obtained in conferences with the counselor may be used.

II. Principal responsibilities of the School Counselor to PARENTS

A. The school counselor

1. shall work with parents so as to enhance the development of the counselee.
2. shall treat information received from the parents of a counselee in a confidential manner.
3. shall share, communicate and interpret pertinent data, and the counselee's academic progress with his parents.
4. shall share information about the counselee only with those persons properly authorized to receive this information.

III. Principal responsibilities of the School Counselor to FACULTY, ADMINISTRATION AND COLLEAGUES

A. The school counselor

1. shall use discretion, within legal limits and requirements of the state in releasing personal information about a counselee to maintain the confidences of the counselee.
2. shall contribute pertinent data to cumulative records and make it accessible to professional staff (except personal factors and problems which are highly confidential in nature).
3. shall cooperate with colleagues by making available as soon as possible requested reports which are accurate, objective, meaningful and concise.
4. shall cooperate with other pupil personnel workers by sharing information and/or obtaining recommendations which would benefit the counselee.
5. may share confidential information when working with the same counselee, with the counselee's knowledge and permission.
6. must maintain confidentiality even though others may have the same knowledge.
7. shall maintain high professional integrity regarding fellow workers when assisting in problem areas related to actions, attitudes and competencies of faculty or colleagues.

IV. Principal responsibilities of the School Counselor to SCHOOL AND COMMUNITY

A. The school counselor

1. shall support and protect the educational program against any infringement which indicates that it is not to the best interest of the counselee or program.
2. must assume responsibility in delineating his role and function, in developing educational procedure and program, and in assisting administration to assess accountability.
3. shall recommend to the administration any curricular changes necessary in meeting valid educational needs in the community.
4. shall work cooperatively with agencies, organizations and individuals in school and community which are interested in welfare of youth.
5. shall, with appropriate release, supply accurate information according to his professional judgment to community agencies, places of employment and institutions of higher learning.
6. should be knowledgeable on policies, laws, and regulations as they relate to the community, and use educational facilities accordingly.
7. shall maintain open communication lines in all areas pertinent to the best interest of counselees.
8. shall not accept remuneration beyond contractual salary for counseling any pupil within the school district. The counselor shall not promote or direct counselees into counseling or educational programs which would result in remuneration to the counselor.
9. shall delineate in advance his responsibilities in case of any confrontation and have an agreement which is supported by the administration and the bargaining agency.

V. Principal responsibilities of the School Counselor to SELF

A. The school counselor

1. should continue to grow professionally by
 - a. attending professional meetings
 - b. actively participating in professional organizations
 - c. being involved in research
 - d. keeping abreast of changes and new trends in the profession and showing a willingness to accept those which have proved to be effective
2. should be aware of and function within the boundaries of his professional competency.
3. should see that his role is defined in mutual agreement among the employer, students to be served, and the counselor. Furthermore, this role should be continuously clarified to students, staff, parents and community.

VI. Principal responsibilities of the School Counselor to the PROFESSION.

A. The school counselor

1. should be cognizant of the developments in his profession

- and be an active contributing participant in his professional association--local, state and national.
2. shall conduct himself in a responsible manner and participate in developing policies concerning guidance.
 3. should do research which will contribute to professional and personal growth as well as determine professional effectiveness.
 4. shall under no circumstances undertake any group encounter or sensitivity session, unless he has sufficient professional training.
 5. shall, in addition to being aware of unprofessional practices, also be accountable for taking appropriate action to eliminate these practices.

Adopted by the ASCA Governing Board in October 1972.

Appendix 2.

ASCA PRINCIPLES OF CONFIDENTIALITY

(A position statement approved by ASCA Governing Board, November, 1974)

Introduction

The members of the American School Counselor Association affirm their belief in the worth and dignity of the individual. It is the professional responsibility of school counselors to fully respect the right to privacy of those with whom they enter counseling relationships.

A counseling relationship requires an atmosphere of trust and confidence between the client and the counselor. A client has the right to privacy and to expect confidentiality. This confidentiality must not be abridged by the counselor except where there is a clear and present danger to the client or to other persons.

The counselor reserves the right to consult with other professionally competent persons when this is in the interest of the client. Confidentiality assures that disclosures made will not be divulged to others except when authorized by the client. Counseling information used in research and training of counselors should fully guarantee the anonymity of the counselee.

In the event of possible judicial proceedings the counselor should initially advise the school administration as well as the counselee if available, and, if necessary, consult legal counsel. When reports are required to be produced, every effort should be made to limit demands for information to those matters essential for the purposes of the legal proceeding.

Guidelines

1. The main purpose of privileged communication is to offer counselees a relationship in which they will be able to deal with what concerns them without fear of disclosure.
2. In reality, it is the client who is privileged. It is the client's own information and the client has the right to say who shall have access to it and who shall not.
3. The counselor and client must be provided with adequate physical facilities that guarantee the confidentiality of the counseling relationship.

4. With the enactment of Public Law 93-380 which speaks to the rights and privacy of parents and students, great care should be taken with recorded information.
5. Counselors must be concerned about individuals who have access to confidential information. Counselors must adhere to PL 93-380.
6. All faculty and administrative personnel should receive in-service training concerning the privacy rights of students. Counselors should assume the primary responsibility for educating school personnel in this area.
7. It should be the policy of each school to guarantee secretaries adequate working space so that students and school personnel will not come into contact with confidential information, even inadvertently.
8. Counselors should undertake a periodic review of information requested of their clients. Only relevant information should be retained.
9. Counselors must not discuss matters over the telephone. A counselor should insist that a request for information be made in writing on official stationery.
10. Counselors should be aware that it is much more difficult to guarantee confidentiality in group counseling than in individual counseling.
11. Communications made in good faith concerning a student may be classified as privileged by the courts and the communicating parties will be protected by law against legal actions seeking damages for libel or slander. Generally, it may be said that an occasion of this particular privilege arises when one acts in the bona fide discharge of a public or private duty. This privilege may be abused or lost by malice, improper and unjustifiable motive, bad faith, or excessive publication.
12. When a counselor is in doubt about what to release in a judicial proceeding, the counselor should arrange a conference with the judge to explain the counselor's dilemma and get advice on how to proceed.
13. Counselors have a responsibility to encourage school administrators to develop written policies concerning the ethical handling of all records in their school system. The development of additional guidelines relevant to the local situation is encouraged.
14. Finally, it is strongly recommended that state and local counselor associations implement these principles and guidelines with appropriate legislation.

Appendix. 3.

STUDENT RIGHTS: A DEVELOPING RIGHT TO KNOW

(The following position statement has been approved by the ASCA Governing Board.)

The American School Counselor Association supports the constitutional rights of all persons to their individual and collective freedom to express views and feelings which have also been recognized by the courts of this nation.

The United States Congress has enacted into law protection of the rights and privacy of parents and students, particularly relating to the records maintained on each student (PL 93-380). Our children and youth need specific interpretation related to the constitutional and lawful rights related to the rights to which present and former students (and parents) are entitled.

Therefore, the American School Counselor Association hereby formally supports the Consitution of the USA, in particular the first and fourteenth amendments as related to this position statement, and Public Law 93-380. ASCA thereby is committed to be actively involved in assuring that students be treated as citizens of the USA with all due rights, privileges, and responsibilities.

Counselors are serving as advocates, activists, and catalysts for assuring these rights. Therefore, ASCA further supports and promotes:

1. Improved record keeping;
2. Law-abiding, discriminating release of information/data from student records;
3. The recording of positive, meaningful, and nonvaluative evaluations on student records and documents;
4. Positive reinforcements in the learning processes;
5. Student orientation to all rights and due processes open to him/her, i.e., how to get one's rights as a student; what to do if searched, seized, or interrogated; reviewing one's school records (or parental review of same); resources of assistance available to students; freedom to express one's views; freedom of the press; disseminating information regarding state status on corporal punishment; the right to have a student Bill of Rights in the school, school system, or state;
6. Student orientation and understanding of student responsibilities as well as student rights under the Consitution and PL 93-380 without understanding student rights as has more

frequently been the case.

ASCA supports legislation and court actions which will insure rights of students as citizens of the USA. ASCA's position is that the counselor is the "student advocate"--supporter, intercessor, pleader, defender--through speaking, writing, and action!

Appendix 4.

ETHICAL STANDARDS

AMERICAN PERSONNEL AND GUIDANCE ASSOCIATION

(Presented below are sections of this document that relate to legal concerns for counselors.)

Section B: Counselor-Counselee Relationship

To the extent that the counselee's choice of action is not imminently self- or other-destructive, the counselee must retain freedom of choice. When the counselee does not have full autonomy for reasons of age, mental incompetency, criminal incarceration, or similar legal restrictions, the member may have to work with others who exercise significant control and direction over the counselee. Under these circumstances the member must apprise counselees of restrictions that may limit their freedom of choice.

1. The member's primary obligation is to respect the integrity and promote the welfare of the counselee(s), whether the counselee(s) is (are) assisted individually or in a group relationship. In a group setting, the member-leader is also responsible for protecting individuals from physical and/or psychological trauma resulting from interaction within the group.

2. The counseling relationship and information resulting therefrom must be kept confidential, consistent with the obligations of the member as a professional person. In a group counseling setting the member is expected to set a norm of confidentiality regarding all group participants' disclosures.

...

4. When the counselee's condition indicates that there is clear and imminent danger to the counselee or others, the member is expected to take direct personal action or to inform responsible authorities. Consultation with other professionals should be utilized where possible. Direct interventions, especially the assumption of responsibility for the counselee, should be taken only after careful deliberation. The counselee should be involved in the resumption of responsibility for his actions as quickly as possible.

5. Records of the counseling relationship including interview notes, test data, correspondence, tape recordings, and other documents are to be considered professional information for use in counseling, and they are not part of the public or official records of the institution or agency in which the counselor is employed. Revelation to others of counseling material should occur only upon the express

consent of the counselee.

6. Use of data derived from a counseling relationship for purposes of counselor training or research shall be confined to content that can be sufficiently disguised to ensure full protection of the identity of the counselee involved.

7. Counselees shall be informed of the conditions under which they may receive counseling assistance at or before the time when the counseling relationship is entered. This is particularly so when conditions exist of which the counselee would be unaware. In individual and group situations, particularly those oriented to self-understanding or growth, the member-leader is obligated to make clear the purposes, goals, techniques, rules of procedure, and limitations that may affect the continuance of the relationship.

...

9. The member reserves the right to consult with any other professionally competent person about a counselee. In choosing a consultant, the member avoids placing the consultant in a conflict of interest situation that would preclude the consultant's being a proper party to the member's efforts to help the counselee.

10. If the member is unable to be of professional assistance to the counselee, the member avoids initiating the counseling relationship or the member terminates it. In either event, the member is obligated to refer the counselee to an appropriate specialist. (It is incumbent upon the member to be knowledgeable about referral resources so that a satisfactory referral can be initiated.) In the event the counselee declines the suggested referral, the member is not obligated to continue the relationship.

11. When the member learns from counseling relationships of conditions that are likely to harm others, the member should report the condition to the responsible authority. This should be done in such a manner as to conceal the identity of the counselee.

12. When the member has other relationships, particularly of an administrative, supervisory, and/or evaluative nature, with an individual seeking counseling services, the member should not serve as the counselor but should refer the individual to another professional. Only in instances where such an alternative is unavailable and where the individual's condition definitely warrants counseling intervention should the member enter into and/or maintain a counseling relationship.

13. All experimental methods of treatment must be clearly indicated to prospective recipients, and safety precautions are to be adhered to by the member.

14. When the member is engaged in short-term group treatment/training programs, e.g., marathons and other encounter-type or growth groups, the member ensures that there is professional assistance available during and following the group experience.

15. Should the member be engaged in a work setting that calls for

any variation from the above statements, the member is obligated to consult with other professionals whenever possible to consider justifiable alternatives. The variations that may be necessary should be clearly communicated to other professionals and prospective counselees.

Section C: Measurement and Evaluation

7. The purpose of testing and the explicit use of the results should be made known to the examinee prior to testing. The counselor has a responsibility to ensure that instrument limitations are not exceeded and that periodic review and/or retesting are made to prevent counselee stereotyping.

8. The examinee's welfare and explicit prior understanding should be the criteria for determining the recipients of the test results. The member is obligated to see that adequate interpretation accompanies any release of individual or group test data. The interpretation of test data should be related to the examinee's particular concerns.

9. The member is expected to be cautious when interpreting the results of research instruments possessing insufficient technical data. The specific purposes for the use of such instruments must be stated explicitly to examinees.

10. The member must proceed with extreme caution when attempting to evaluate and interpret the performance of minority group members or other persons who are not represented in the norm group on which the instrument was standardized.

Section E: Consulting and Private Practice

Consulting refers to a voluntary relationship between a professional helper and help-needing social unit (industry, business, school, college, etc.) in which the consultant is attempting to give help to the client in the solution of some current or potential problem. When "client" is used in this section it refers to an individual, group, or organization served by the consultant. (This definition of "counseling" is adapted from "Dimensions of the Consultant's Job" by Ronald Lippitt, Journal of Social Issues, Vol. 15, No. 2, 1959).

1. Members who act as consultants must have a high degree of self-awareness of their own values and needs in entering helping relationships that involve change in social units.

2. There should be understanding and agreement between consultant and client as to the task, the directions or goals, and the function of the consultant.

3. Members are expected to accept only those consulting roles for

which they possess or have access to the necessary skills and resources for giving the kind of help that is needed.

4. The consulting relationship is defined as being one in which the client's adaptability and growth toward self-direction are encouraged and cultivated. For this reason, the consultant is obligated to maintain consistently the role of a consultant and to avoid becoming a decision maker for the client.

5. In announcing one's availability for professional services as a consultant, the member follows professional rather than commercial standards in describing services with accuracy, dignity, and caution.

6. For private practice in testing, counseling, or consulting, all ethical principles defined in this document are pertinent. In addition, any individual, agency, or institution offering educational, personal, or vocational counseling should meet the standards of the International Association of Counseling Services, Inc.

7. The member is expected to refuse a private fee or other remuneration for consultation with persons who are entitled to these services through the member's employing institutions or agency. The policy of a particular agency may make explicit provisions for private practice with agency counselees by members of its staff. In such instances, the counselees must be apprised of other options open to them should they seek private counseling services.

8. It is unethical to use one's institutional affiliation to recruit counselees for one's private practice.

Section F: Personnel Administration

It is recognized that most members are employed in public or quasi-public institutions. The functioning of a member within an institution must contribute to the goals of the institution and vice versa if either is to accomplish their respective goals or objectives. It is therefore essential that the member and the institution function in ways to: (a) make the institution's goals explicit and public; (b) make the member's contribution to institutional goals specific; and (c) foster mutual accountability for goal achievement.

To accomplish these objectives it is recognized that the member and the employer must share responsibilities in the formulation and implementation of personnel policies.

1. Members should define and describe the parameters and levels of the professional competency.

2. Members should establish interpersonal relations and working agreements with supervisors and subordinates regarding counseling or clinical relationships, confidentiality, distinction between public and private material, maintenance and dissemination of recorded information, work load, and accountability. Working agreements in each instance should be specified and made known to those concerned.

3. Members are responsible for alerting their employers to

conditions that may be potentially disruptive or damaging.

4. Members are responsible for informing employers of conditions that may limit their effectiveness.

. . .

Appendix 5.

AMERICAN SCHOOL COUNSELOR ASSOCIATION

COMMITTEE REPORT:
PRIVILEGED COMMUNICATIONS
April, 1974

APGA CONVENTION
NEW ORLEANS, LOUISIANA

John D. Shafer, Chairman
Gibbs Senior High School
St. Petersburg, FL 33712

Committee Report:

The American School Counselor Association authorized the development of the PRIVILEGED COMMUNICATIONS COMMITTEE for the expressed purpose of identifying states in the United States that have a communications privilege for school students and their counselors.

In the past, professional newsletters and journals have reported on the states which do have statutory protection for student communications on the law books. In several cases of reporting, the information has not been completely accurate, or up to date. The PRIVILEGED COMMUNICATIONS COMMITTEE has attempted to present the most up-to-date and complete information. An attempt has also been made to provide the profession with names of persons who have personal knowledge in the area of privileged communications for their state.

The survey which appears on the next page of this report was sent to three persons in each state in the United States. One copy went to the ASCA division president in that state, another went to the state director of pupil personnel or guidance services, and the third letter went to the legislation contact person that was identified by the 1972-1973 ASCA Legislative Committee. All three letters were sent in the mail during the first week in October, 1973. Second and even third letters followed up the first request during the first week in January, 1974. A fourth letter was sent, as needed, during the first week in February, 1974. If persons were identified, through the return correspondence, as knowledgeable persons in the area of privileged communications, letters were in turn sent to them.

As of this date, February 11, 1974, the committee has received forty-seven (47) state responses out of a possible fifty (50) in the United States. This is a ninety four percent (94%) return on the national survey. Through error, the District of Columbia, Puerto Rico, and the Virgin Islands were not included in the survey.

Each respondent was asked to provide information on existing statutes which relate to privileged communications, pending legislation, or legislation which did not pass a state legislature during past sessions. Names of persons, organizations, etc. which could provide additional information on privileged communication were asked for.

SOME OBSERVATIONS:

After reading some of the correspondence from the states, it became apparent that the meaning and understanding of what privileged communications was, was not clear to the writer of some letters. PRIVILEGED COMMUNICATIONS MEANS that the information which belongs to the student, and is shared with the counselor, will not be released unless the student authorizes the release. While this is not the legal definition of privileged communications, it is the most accepted concept used in the United States. Students "own" the information shared. It is not the right of the counselor to release the information. It is the students' right only.

Communications from within some states was not consistent. A state level professional person wrote one kind of information, while a professional person from a state organization wrote conflicting information. It became apparent that communications from the state level and the organizational level were not flowing freely in both directions.

Some states expressed concerns about the statutes on the books. It is hoped that these states will share their concerns with the American School Counselor Association so that others, who are planning legislation will benefit from these concerns.

John D. Shafer, Chairman
Gibbs Senior High School
3181 Ninth Avenue, South
St. Petersburg, FL 33712
2/11/74

PRIVILEGED COMMUNICATIONS COMMITTEE
Gibbs Senior High School
3181 9th Avenue, South
St. Petersburg, FL 33712
October, 1973

Dear Colleague:

The American School Counselor Association has authorized the development of a Privileged Communications Committee. The purpose of this committee is to determine the existing laws, if any, in our fifty states which would provide for a communications privilege between students and their school guidance personnel.

The ASCA Legislation Committee during the past years has identified several states which do have laws on the books pertaining to privileged communications. It is the purpose and function of the PRIVILEGED COMMUNICATIONS COMMITTEE to obtain current information about these laws which now exist, as well as legislative bills which are pending in the legislature at the state level.

We hope to summarize all existing laws, as well as those pending, in the United States which provide for a communications privilege. A booklet will be prepared, hopefully by our April 1974 convention in New Orleans, and will be distributed to interested persons who wish to have this information made available to them.

Please assist our committee by providing the following information about your state statutes. Any information about pending legislation, or legislation which did not pass your state legislature would be appreciated. We will need the following information: (Let us know if you do not have information to report.)

- Copies of existing laws now on the books.
- Copies of legislative bills which are now pending.

- Copies of legislative bills which were introduced to committee or to the legislature itself, but were killed for lack of support.
- Names of persons, organizations, etc. which could provide additional information on privileged communications legislation in your state.

You will receive a copy of any published information from this committee if you will assist us. I sincerely hope that you will give our request for information your support. The American School Counselor Association has provided this committee with funds as a service to our profession and the resulting benefits to our counselees.

Sincerely,

John D. Shafer
ASCA Governing Board
Committee Chairman

SUMMARY OF FINDINGS

I. States where privileged communications statutes exist on the books:

Delaware, Idaho, Indiana, Maine, Maryland, Michigan*, Montana, Nevada, North Carolina, North Dakota, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Washington.

New Hampshire, Wyoming - records only.

*Under study for revision

II. States where legislative action is currently pending.

California, Florida, Iowa, Kentucky

III. States where legislative efforts have failed in committee, or in the legislature, or have been vetoed.

Arizona, Colorado, Hawaii, Iowa, Kentucky, Massachusetts, Minnesota, New Jersey, New York, Texas, Utah, Virginia, West Virginia, Wisconsin.

IV. States where privileged communications does not appear on the statute books, but plans are being developed, or are under study.

Alaska, Arkansas, Georgia, Illinois, Louisiana, Kentucky, Minnesota, Missouri, Nebraska, New Hampshire, New Jersey, Ohio*, Tennessee, Texas, West Virginia.

*Incomplete information provided.

V. States that do not have privileged communications. There are no reported plans to develop legislation.

Alabama, Kansas, Mississippi, Rhode Island.

VI. States that did not respond to the survey.

Connecticut, New Mexico, Vermont.

ALABAMA -

Alabama has no law relating to privileged communications. There are no plans for the development of legislative bills at this time.

Contact Person - Clifton Nash, Coordinator, Pupil Personnel Services, State of Alabama Department of Education, State Office Building, Montgomery, AL 36104

ALASKA -

The State of Alaska has no existing laws on the books or bills pending in the state legislature relating to privileged communications. Plans are being developed for legislation, but are now only in the thinking stage.

Contact Person - Wanda J. Cooksey, Chief, Guidance Services Section, Department of Education, Division of Instructional Services, Pouch F, Alaska Office Building, Juneau, Alaska 99801

ARIZONA -

There are no present privileged communications laws on the books. A bill was introduced last year, but it did not pass the committee.

HB 2090: Relating to courts and civil proceedings; providing privileged communications between student and high school counselor: IN A CIVIL ACTION A PUBLIC HIGH SCHOOL COUNSELOR SHALL NOT, WITHOUT CONSENT OF THE STUDENT, BE EXAMINED AS TO ANY COMMUNICATIONS MADE BY THE STUDENT TO HIM OR HIS ADVICE GIVEN THEREON IN THE COURSE OF RENDERING PROFESSIONAL COUNSELING, NOR SHALL ANY WORK PRODUCT OF THE COUNSELOR, WHEREVER LOCATED, BE SUBJECT TO SUBPOENA . . . COUNSELOR IS ANY PUBLIC HIGH SCHOOL TEACHER WHO HAS BEEN SPECIALLY TRAINED IN THE FIELD OF COUNSELING.

Contact Person - Mary Waits, Box 311, Scottsdale, AZ 85252

ARKANSAS -

The issue of privileged communications has been under study for the past three years. Specific problems of who should be covered under the law, and also special certification for counselors must be resolved.

Contact Person - Earl D. Downs, Chairman, Privileged Communications Committee, Hope High School, Hope, Arkansas 71801

CALIFORNIA -

A bill to amend existing state law will be introduced in the 1974 legislature. The bill provides that school counselors be granted the same privileges as psychotherapists, except in criminal proceedings.

ASSEMBLY BILL 1119: Extends psychotherapist privilege to persons certified and employed as school counselors, except in criminal proceedings.

...(f) A PERSON POSSESSING A VALID CREDENTIAL AND EMPLOYED BY A SCHOOL DISTRICT AS A COUNSELOR PURSUANT TO SECTION 1070 OF THE EDUCATION CODE (SHALL BE GRANTED THE PSYCHOTHERAPIST-PATIENT PRIVILEGE PROVIDED FOR IN SECTION 1010 OF EVIDENCE CODE.)

Contact Person - Carolyn M. Fowle, EdD, Legislative Representative, Lodi Unified Sch. District, 815 West Lockeford St. Lodi, CA 95240

COLORADO -

Colorado does not have a law which extends the right of privileged communications to school counselors. An attempt was made last year to insert the word "counselor" into the existing laws which provides such privileges for psychologists and others. The proposal failed to pass the legislature.

Proposal was to change Chapter 154, section 1-7: WHO MAY NOT TESTIFY WITHOUT CONSENT. A CERTIFIED PSYCHOLOGIST (COUNSELOR) SHALL NOT BE EXAMINED WITHOUT CONSENT OF HIS CLIENT, AS TO ANY COMMUNICATIONS MADE BY THE CLIENT TO HIM, OR HIS ADVICE GIVEN THEREON IN THE COURSE OF PROFESSIONAL EMPLOYMENT provides for the privilege to be extended to the secretary, stenographer, or clerk, and also other persons who may have participated in group therapy with persons to whom the testimony sought relates.

Contact Person - Jerry L. Terrill, PhD, Consultant in Guidance Services, Colorado Department of Education, State Office Building, 201 East Colfax Denver, CO 80203

CONNECTICUT -

(Did not respond to survey)

DELAWARE -

The Delaware statute on pupil disclosure passed the legislature in 1970. It relates to all school personnel.

TITLE 14, CHAPTER 41, SECTION 4114: DISCLOSURE OF PUPIL'S RECORDS

ALL PERSONNEL RECORDS OF PUPILS IN ALL PUBLIC SCHOOLS IN DELAWARE AND IN ALL PRIVATE SCHOOLS IN DELAWARE, INCLUDING BUT NOT LIMITED TO, TEST SCORES, MARKS GIVEN ACCORDING TO A SCHOOL GRADING SYSTEM, PSYCHOLOGICAL OR MEDICAL REPORTS, REPORTS RELATED TO DISCIPLINE, PERSONNEL AND ANECDOTAL REPORTS, REPORTS BY GUIDANCE COUNSELORS, ARE DEEMED TO BE CONFIDENTIAL AND NOT TO BE DISCLOSED OR THE CONTENTS THEREOF RELEASED TO NON-SCHOOL PERSONNEL EXCEPT IN THE FOLLOWING MANNER:

- a. records furnished upon request to federal, state, county, or municipal governmental agencies under court order.
- b. copies of personnel records shall be furnished upon signed request of the pupil (if fourteen years or age or older), to any school, college, university, employer, licensed physician. (Provision for a standard release form is mentioned in the statute).
- c. provision is made for release of information at appropriate intervals to parent or legal guardian. Specific reference is made to academic progress, personal health or behavior.

A MINOR HAVING REACHED THE AGE OF FOURTEEN SHALL BE CONSIDERED AS AN ADULT.....The school employee is protected from suit because of his statement and interpretation of said records.

Contact Person: N.W. Moore, Jr., Cape Henlopen High School, Lewes, DE 19958

FLORIDA -

Statutory protection for the privileged communications between students and school counselors is being sought for the third year. Legislation is limited to student drug abusers only, and includes school counselors, school psychologists, school social workers.

A BILL TO BE ENTITLED AN ACT RELATING TO SCHOOLS; CREATING SECTION 232.46, FLORIDA STATUTES, PROTECTING PRIVILEGED COMMUNICATIONS BETWEEN STUDENT-CLIENTS AND SCHOOL GUIDANCE COUNSELORS, SPECIALISTS IN SCHOOL PSYCHOLOGY, AND VISITING TEACHERS (SOCIAL WORKERS) CONCERNING DRUG PROBLEMS, INCLUDING ALCOHOL PROBLEMS OF STUDENTS; PROVIDING IMMUNITY FROM DISCLOSURE IN ADMINISTRATIVE, JUDICIAL, OR LEGISLATIVE PROCEEDINGS; PROVIDING FOR DISCLOSURE TO PARENTS OR GUARDIANS; PROVIDING AN EFFECTIVE DATE.

There is provision in this bill for students to request that parents or gaurdians not be informed of confidential information divulged to the school counselor, psychologist, or social worker. There is also provision for information to be released by the professional person, WHEN IN HIS PROFESSIONAL JUDGEMENT IT IS IN THE BEST INTEREST OF THE STUDENT-CLIENT TO DO SO, OR WHEN THE STUDENT-CLIENT REQUEST IN WRITING THAT SUCH INFORMATION SHALL BE RELEASED.

Contact Person - John D. Shafer, Chairman, Legislation Committee, Florida School Counselor Association, 2072 Dolphin Blvd., South St. Petersburg, FL 33707

GEORGIA -

The State of Georgia has no laws on the books allowing for privileged communications between students and their school guidance personnel. A committee has been formed to study the needs of such legislation.

Contact Person - Dr. Louis E. Shilling, School of Education, Atlanta University
Atlanta, GA 30314

HAWAII -

The State of Hawaii does not provide, in the statures, for privileged communications for school guidance personnel. An attempt was made last year to add the "outreach counselor" to the same statute which grants privileged communications to the clergy and physician. (The outreach counselor is employed in the states' dropout program). The bill failed to pass the legislature.

...NO OUTREACH COUNSELOR EMPLOYED IN THE DEPARTMENT OF EDUCATION OUTREACH PROGRAM SHALL, WITHOUT THE CONSENT OF THE ADVISEE WHOM HE COUNSELS, DIVULGE IN ANY ACTION, SUIT, OR PROCEEDING, WHETHER CIVIL OR CRIMINAL, ANY STATEMENT MADE TO HIM IN HIS CAPACITY AS OUTREACH COUNSELOR.

Contact Person - Clara Katekaru, Program Specialist Guidance and Counseling, State of Hawaii Department of Education,
P.O. Box 2360, Honolulu, HI 96804

IDAHO -

Legislation was enacted in 1971 which would allow for privileged communications for certified counselors, psychologists, and psychological examiners.

AN ACT RELATING TO PRIVILEGED COMMUNICATIONS, AMENDING SECTION 9-203, IDAHO CODE, TO PROVIDE IMMUNITY FROM DISCLOSURE BY COUNSELORS, PSYCHOLOGISTS AND PSYCHOLOGICAL EXAMINERS OF PRIVILEGED OR CONFIDENTIAL COMMUNICATIONS MADE THERETO BY STUDENTS OF PUBLIC OR PRIVATE SCHOOLS IN ANY CIVIL OR CRIMINAL ACTION TO WHICH SUCH STUDENT SO COUNSELED IS A PARTY: AND DECLAR-
AN EMERGENCY.

...ANY CERTIFICATED COUNSELOR, PSYCHOLOGIST OR PSYCHOLOGICAL EXAMINER, DULY APPOINTED, REGULARLY EMPLOYED AND DESIGNATED IN SUCH CAPACITY BY ANY PUBLIC OR PRIVATE SCHOOL IN THIS STATE FOR THE PURPOSE OF COUNSELING STUDENTS, SHALL BE IMMUNE FROM DISCLOSING, WITHOUT THE CONSENT OF THE STUDENT, ANY COMMUNICATION MADE BY ANY STUDENT SO COUNSELED OR EXAMINED IN ANY CIVIL OR CRIMINAL ACTION TO WHICH SUCH STUDENT IS A PARTY. SUCH MATTERS SO COMMUNICATED SHALL BE PRIVILEGED AND PROTECTED AGAINST DISCLOSURE.

Contact Person - Department of Education, State of Idaho, Len Jordan, Office Building, Boise, ID 83720

ILLINOIS -

Privileged communications legislation is one of three major priority issues of the Illinois School Counselors Association this year. There are, at present, no laws on the books related to a communications privilege. Bills have been introduced in the past, but with little success.

Contact Person - Phil Hartweg, Legislative Committee, Illinois School Counselors Association, York Community High School, 355 W. Charles Road, Elmhurst, IL 60126

INDIANA -

A law providing for immunity of counselors from disclosing privileged communications was enacted in 1965.

28-4537. IMMUNITY OF COUNSELORS FROM DISCLOSING PRIVILEGED OR CONFIDENTIAL COMMUNICATIONS. - ANY COUNSELOR DULY APPOINTED OR DESIGNATED A COUNSELOR FOR THE SCHOOL SYSTEM BY ITS PROPER OFFICERS AND FOR THE PURPOSE OF COUNSELING PUPILS IN SUCH SCHOOL SYSTEM SHALL BE IMMUNE FROM DISCLOSING ANY PRIVILEGED OR CONFIDENTIAL COMMUNICATION MADE TO SUCH COUNSELOR AS SUCH BY ANY SUCH PUPIL HEREIN REFERRED TO. SUCH MATTERS SO COMMUNICATED SHALL BE PRIVILEGED AND PROTECTED AGAINST DISCLOSURE.

Contact Person - Mrs. Rachel K. Jesting, 710 South Fourth Street, Chesterton, IN 46304

IOWA -

Legislation is presently being sought to add school counselors to present privilege granted to attorneys and physicians. A bill filed last year failed to get out of committee.

...NO PRACTICING ATTORNEY, COUNSELOR, PHYSICIAN, SURGEON, CERTIFIED GUIDANCE COUNSELOR AS PROVIDED IN SECTION TWO HUNDRED FIFTY-SEVEN POINT TWENTY-FIVE OF THE CODE, OR THE STENOGRAPHER OR CONFIDENTIAL COMMUNICATION PROPERLY ENTRUSTED TO HIM IN HIS

PROFESSIONAL CAPACITY, AND NECESSARY AND PROPER TO ENABLE HIM TO DISCHARGE THE FUNCTION OF HIS OFFICE ACCORDING TO THE USUAL COURSE OF PRACTICE OR DISCIPLINE.

Contact Person - Giles J. Smith, Chief, Guidance Services Section, Iowa Department of Public Instruction, Des Moines, IA 50319

KANSAS -

There are no current laws relating to privileged communications in Kansas.

Contact Person - Frank Ybarra, Supervisor of Guidance Topeka Public Schools, 1601 Van Buren Topeka, KS 66612

KENTUCKY -

The Kentucky Personnel and Guidance Association sponsored a privileged communications bill during the last session of their legislature. The bill failed in the State Senate. The bill will be reintroduced this year.

ANY CERTIFIED COUNSELOR, WHO IS DULY APPOINTED AND REGULARLY EMPLOYED FOR THE PURPOSE OF COUNSELING IN A PUBLIC SCHOOL, OR A PRIVATE SCHOOL OF THIS STATE, SHALL BE IMMUNE FROM DISCLOSING IN ANY CIVIL OR CRIMINAL COURT PROCEEDING, WITHOUT THE CONSENT OF THE COUNSELEE, ANY COMMUNICATION MADE BY THE COUNSELEE TO THE COUNSELOR IN HIS PROFESSIONAL CHARACTER, OR THE ADVICE THEREON. IF THE COUNSELEE IS LESS THAN EIGHTEEN YEARS OF AGE, NEITHER THE COMMUNICATION OR ADVICE THEREON SHALL BE DISCLOSED IN THE COURT PROCEEDING WITHOUT THE CONSENT OF THE COUNSELEE AND HIS PARENT OR LEGAL GUARDIAN.

Contact Person - Jack Hendrix, KPGA Legislative Comm. Rte. 4, Box 15-D, London, KY 40741

LOUISIANA -

No legislation exists which protects the communications between school counselors and students in Louisiana. The Louisiana School Counselor Association, Political Action Committee is presently looking into the immunity provided for the clinical social workers in that state. R.S. 37:2714, Act 706 of the 1972 Session related to privilege communications and clinical social workers. Specific information was not provided.

Contact Person - Ms. Bette Levine, President, Louisiana School Counselor Association, 2624 Hundred Oaks, Baton Rouge, LA 70808

MAINE -

Privileged communications for school counselors was enacted in 1973.

AN ACT TO ESTABLISH PRIVILEGED COMMUNICATIONS FOR SCHOOL COUNSELORS. SECTION 806 REVISED STATUTES --- THE RIGHT OF PRIVILEGED COMMUNICATIONS SHALL BE EXTENDED TO SCHOOL COUNSELORS, INCLUDING BUT NOT LIMITED TO, ELEMENTARY AND SECONDARY COUNSELORS AND COUNSELORS WHO MAY WORK IN A SCHOOL SETTING AT A POST-SECONDARY SCHOOL.

A COUNSELOR TO WHOM THIS PRIVILEGE IS GRANTED SHALL NOT BE REQUIRED, EXCEPT AS PROVIDED IN THIS SECTION, TO DIVULGE OR TO RELEASE INFORMATION WHICH HE MAY HAVE GATHERED IN HIS COUNSELING RELATION WITH SAID CLIENT OR, IN THE CASE OF A MINOR, THE PERSON OR AGENCY HAVING LEGAL CUSTODY OF SAID MINOR.

Section 806 provides for a definition of a client and a school counselor. It also provides for the release of information under certain circumstances. ...IN THE EVENT THAT THE COUNSELEE OR CLIENT'S CONDITION IS SUCH AS TO REQUIRE OTHERS TO ASSUME RESPONSIBILITY FOR HIM, OR WHEN THERE IS CLEAR AND IMMINENT DANGER TO THE COUNSELEE OR CLIENT OR TO OTHERS, THE COUNSELOR IS EXPECTED TO REPORT THIS FACT TO AN APPROPRIATE RESPONSIBLE AUTHORITY OR TAKE SUCH OTHER EMERGENCY MEASURES AS THE SITUATION DEMANDS.

Contact Person - Ms. Betty Mc Laughlin, Guidance Consultant, Department of Education
Augusta, ME 04330 .

MARYLAND -

Confidential communications exists between school personnel students who are seeking to overcome drug abuse. The law was enacted in 1971.

CHAPTER 692, SECTION 85A, LAWS OF MARYLAND - a. WHENEVER A STUDENT SHALL SEEK INFORMATION FOR THE PURPOSE OF OVERCOMING ANY FORM OF DRUG ABUSE, AS DEFINED IN SECTION 2d OF ARTICLE 43b OF THIS CODE, FROM ANY TEACHER, COUNSELOR, PRINCIPAL OR OTHER PROFESSIONAL EDUCATOR EMPLOYED BY AN EDUCATIONAL INSTITUTION APPROVED UNDER THE PROVISIONS OF SECTION 11 and 12 OF THIS ARTICLE, NO STATEMENT, WHETHER ORAL OR WRITTEN, MADE BY THE STUDENT AND NO OBSERVATION OR CONCLUSION DERIVED SHALL BE ADMISSIBLE AGAINST THE STUDENT IN ANY PROCEEDING.

b. THE DISCLOSURE OF ANY REPORTS, STATEMENTS, OBSERVATIONS, CONCLUSIONS AND OTHER INFORMATION WHICH HAS ASSEMBLED OR PROCURED BY THE EDUCATOR THROUGH THIS CONTACT, SHALL NOT BE REQUIRED BY ANY RULE, REGULATION

OR ORDER OF ANY KIND.

Contact Person - Mrs. Marion Malone, MSCA Legislative
Chairperson, Rte. 3, Box 106-B,
Annapolis, MD 21403

MASSACHUSETTS -

The Massachusetts School Counselor Association submitted the following bill on privilege communications last year. The bill failed to pass the state legislature.

AN ACT PROVIDING THAT CERTAIN COMMUNICATIONS BETWEEN A HIGH SCHOOL STUDENT AND HIS GUIDANCE COUNSELOR SHALL BE PRIVILEGED. ...SECTION 34-c (be amended). A PROFESSIONAL GUIDANCE COUNSELOR IN A JUNIOR HIGH SCHOOL OR HIGH SCHOOL SHALL NOT, WITHOUT THE CONSENT OF THE PERSON MAKING THE DISCLOSURE, BE ALLOWED TO DISCLOSE ANY COMMUNICATION MADE TO HIM IN HIS PROFESSIONAL CHARACTER, IN THE COURSE OF HIS PROFESSIONAL DEALINGS WITH STUDENTS ENJOINED BY THE RULES, PRACTICES OR STANDARDS OF HIS PROFESSION: NOR SHALL SUCH GUIDANCE COUNSELOR TESTIFY BEFORE LEGISLATIVE AND ADMINISTRATIVE PROCEEDINGS AS TO ANY COMMUNICATION MADE TO HIM BY ANY SUCH STUDENT SEEKING HIS COUNSEL AND COMFORT, OR AS TO HIS ADVICE GIVEN THEREON IN THE COURSE OF HIS PROFESSIONAL DUTIES OR IN HIS PROFESSIONAL CHARACTER WITHOUT THE CONSENT OF SUCH PERSON. A PROFESSIONAL GUIDANCE COUNSELOR FOR THE PURPOSES OF THIS PARAGRAPH SHALL BE A SCHOOL COUNSELOR WHO HAS FULFILLED THE GRADUATE COURSE REQUIREMENTS AS SET BY THE BUREAU OF TEACHER PLACEMENT AND CERTIFICATION OF THE DEPARTMENT OF EDUCATION.

Contact Person - Mr. Robert C. Norton, Chairman,
Legislation Committee, Massachusetts
School Counselor Association, Marsh-
field High School
Marshfield, MA 02050

MICHIGAN -

A bill was enacted in 1963 allowing for privileged communications between students and all professional school employees. The Michigan School Counselor Association is presently seeking to revise the current statute.

JUDICATURE ACT OF 1961 (effective January 1963)
600.2165 GENERAL SCHOOL LAWS OF MICHIGAN. NO
TEACHER, GUIDANCE OFFICER, SCHOOL EXECUTIVE OR OTHER
PROFESSIONAL PERSON ENGAGED IN CHARACTER BUILDING
IN PUBLIC SCHOOLS OR IN ANY OTHER EDUCATIONAL INSTI-
TUTIONS, WHO MAINTAINS RECORDS OF STUDENTS' BEHAVIOR
OR WHO HAS SUCH RECORDS IN HIS CUSTODY, OR WHO RECEIVES
IN CONFIDENCE COMMUNICATIONS FROM STUDENTS OR OTHER
JUVENILES, SHALL BE ALLOWED IN ANY PROCEEDINGS, CIVIL
OR CRIMINAL, IN ANY COURT OF THIS STATE, TO DISCLOSE
ANY INFORMATION OBTAINED BY HIM FROM SUCH RECORDS

OR SUCH COMMUNICATIONS: NOR TO PRODUCE SUCH TESTIMONY MAY BE GIVEN, WITH THE CONSENT OF THE PERSON SO CONFIDING OR TO WHOM SUCH RECORDS RELATE, OF SUCH PERSON BE TWENTY-ONE YEARS OF AGE OR OVER, OR IF SUCH PERSON BE A MINOR, WITH THE CONSENT OF HIS PARENT OR LEGAL GUARDIAN.

Contact Person - Mr. Ron Shoemaker, President,
Michigan School Counselor Association
Godwin Heights Public Schools
Grand Rapids, MI 49508

Also - Robert E. Stout
Guidance Consultant
Department of Education
Lansing, MI 48902

MINNESOTA -

Two bills were introduced into the legislature during the past session. One would not allow any school professional staff person to release any information without the consent of a juvenile, any communication or information dealing with such juvenile as to drug usage, use of alcohol, or the existence of venereal disease, when communicated to such school employee by said juvenile or his parents. The second law would make it illegal for any officer or employee of any school or college to release any information concerning a student's conduct, activities, or academic performance during his attendance at the institution without the consent of the student or his parents. Neither bill passed the legislature.

The Minnesota School Counselor Association currently has a committee working on future legislation.

Contact Person - Dr. Reynold Erickson, Director
Pupil Personnel Services
Department of Education
Capitol Square
550 Cedar Street
St. Paul, MN 55101

MISSISSIPPI -

There are no laws on the statute books relating to privileged communications for school counselors, or other school personnel. The Department of Education does not feel that there is a need for such legislation at this time.

Contact Person - Dr. Clyde J. Hatten
 Supervisor, Pupil Personnel Services
 Mississippi Department of Education
 Division of Instruction, P.O. Box 771
 Jackson, MS 39205

MISSOURI -

Legislation dealing with privileged communications is being sought by the Missouri Personnel and Guidance Association and the St. Louis Personnel and Guidance Association. The following is a draft of the proposed legislative bill.

THOSE INDIVIDUALS OR AGENCIES WHO BY THE DEMANDS OF THEIR POSITIONS OR RESPONSIBILITIES ARE PRIVY TO INFORMATION OF A CONFIDENTIAL NATURE, ARE NOT TO COMMUNICATE SUCH INFORMATION TO ANYONE WITHOUT THE SIGNED RELEASE BY THE GIVER OF THE CONFIDENTIAL INFORMATION.

SUCH INFORMATION, EITHER WRITTEN OR VERBAL, GIVEN IN ABOVE CONTEXT IS CONSIDERED INFORMATION WHICH DEALS WITH, BUT NOT LIMITED TO, THE INDIVIDUAL'S PERSONALITY, FEELINGS, HEALTH, ABILITIES, ACTIVITIES, FAMILY, SCHOOL, WORK, ASSOCIATIONS OR ANY OTHER FACTORS, AND SUCH INFORMATION IS GIVEN BY THE INDIVIDUAL.

THIS RIGHT OF CONFIDENTIALITY WILL NOT STAND IF, IN THE PROFESSIONAL'S OPINION, THE INFORMATION GIVEN INDICATES IMMINENT PHYSICAL DANGER TO THE INDIVIDUAL OR SOCIETY.

Contact Person - Ms. Bebe Kennedy, Chairperson
 St. Louis PGA Legislation Committee
 7384 Stratford Avenue
 St. Louis, MO 63130

MONTANA -

In 1971 the counselor, psychologist, nurse, and teacher employed in an educational institution was added to the existing privileged communications law. The Montana Personnel and Guidance Association supported the passage of this law.

CHAPTER 61, PARAGRAPH 7: AN ACT PROVIDING FOR THE CREATION OF A CONFIDENTIAL RELATIONSHIP BETWEEN STUDENT AND SCHOOL PERSONNEL. SECTION 1. SECTION 93-701-4, R.C.M., 1947 is amended to read: 93-701-4. PERSONS IN CERTAIN RELATIONS CANNOT BE EXAMINED.

THERE ARE PARTICULAR RELATIONS IN WHICH IT IS THE POLICY OF THE LAW TO ENCOURAGE CONFIDENCE AND TO PRESERVE IT INVIOLEATE: THEREFORE, A PERSON CANNOT BE EXAMINED AS A WITNESS IN THE FOLLOWING CASES: ...A COUNSELOR, PSYCHOLOGIST, NURSE, OR TEACHER, EMPLOYED BY ANY EDUCATIONAL INSTITUTION, CANNOT BE EXAMINED AS TO COMMUNICATIONS MADE TO HIM IN CONFIDENCE BY A DULY REGISTERED STUDENT OF SUCH INSTITUTION, PROVIDED HOWEVER, THAT THIS PROVISION SHALL NOT APPLY WHERE CONSENT HAS BEEN GIVEN BY THE STUDENT, IF NOT A MINOR, OR IF HE IS A MINOR, BY THE STUDENT AND HIS PARENT OR LEGAL GUARDIAN.

Contact Person - Mr. Del Gustin, Career Education
Coordinator
Montana Department of Education
Helena, MT 59601

NEBRASKA -

At the present time, the State of Nebraska has no statutory provision for privileged communication between school counselors and their clients. The Nebraska Personnel and Guidance Association has directed its legislative committee to study the feasibility of introducing legislation relative to this matter.

Contact Person - Dr. Roger Hudson, Administrator
Student Personnel Services
Nebraska Department of Education
233 South 10th Street
Lincoln, NB 68508

NEVADA -

Through the joint efforts of the Nevada Personnel and Guidance Association and the Nevada State Education Association, a bill granting counselors, psychologists and psychological examiners privileged communications was enacted in 1973. Exceptions to this bill are about information relating to criminal offenses which are punishable by death or life imprisonment.

AN ACT RELATING TO PRIVILEGED COMMUNICATIONS; PROVIDING A LIMITED PRIVILEGE FOR COMMUNICATIONS BETWEEN STUDENTS AND COUNSELORS; PROVIDING A PRIVILEGE FOR CERTAIN COMMUNICATIONS BETWEEN STUDENTS AND TEACHERS CONCERNING THE USE OF DRUGS OR DRUGS OR ALCOHOL; AND PROVIDING OTHER MATTERS PROPERLY RELATING THERETO.

CHAPTER 49 OF NRS, SECTION 2 AND 3 provides for the definition of a counselor and teacher.....SECTION 2, number 2, EXCEPT FOR COMMUNICATIONS RELATING TO ANY CRIMINAL OFFENSE THE PUNISHMENT OFR WHICH IS DEATH OR LIFE IMPRISONMENT, COMMUNICATIONS BY A PUPIL TO A COUNSELOR IN THE COURSE OF COUNSELING OR PSYCHOLOGICAL EXAMINATION ARE PRIVILEGED COMMUNICATIONS, AND A COUNSELOR SHALL NOT, WITHOUT THE CONSENT OF THE PUPIL, BE EXAMINED AS A WITNESS CONCERNING ANY SUCH COMMUNICATION IN ANY CIVIL OR CRIMINAL ACTION TO WHICH SUCH PUPIL IS A PARTY.

...SECTION 3, number 2, COMMUNICATIONS BY A PUPIL TO A TEACHER CONCERNING THE PUPIL'S POSSESSION OR USE OF DRUGS OR ALCOHOLIC BEVERAGES MADE WHILE THE TEACHER WAS COUNSELING OR ATTEMPTING TO COUNSEL SUCH PUPIL ARE PRIVILEGED COMMUNICATIONS AND THE TEACHER SHALL NOT, WITHOUT THE CONSENT OF THE PUPIL, BE EXAMINED AS A WITNESS CONCERNING ANY SUCH COMMUNICATION IN ANY CIVIL OR CRIMINAL ACTION TO WHICH THE PUPIL IS A PARTY.

Contact Person - Mrs. Madelyn Rutherford, Past President
Nevada Personnel and Guidance Association
Sparks Junior High School
2275 18th Street
Sparks, NV 89431

NEW HAMPSHIRE - There is currently a law on the statute books in New Hampshire which protects a pupil's personal school records. The New Hampshire School Counselor Association and the New Hampshire Personnel and Guidance Association are currently developing a bill related to privileged communications.

CHAPTER 91-A: ACCESS TO PUBLIC RECORDS.
DEFINITION OF PUBLIC PROCEEDINGS. THE TERM "PUBLIC PROCEEDINGS" AS USED IN THIS CHAPTER MEANS THE TRANSACTION OF ANY FUNCTIONS AFFECTING ANY OR ALL CITIZENS OF THE STATE.....

EXEMPTIONS. THE RECORDS OF THE FOLLOWING BODIES ARE EXEMPTED FROM THE PROVISIONS OF THIS CHAPTER:.....

III. PERSONAL SCHOOL RECORDS OF PUPILS.

Contact Person - Mr. David W. Veno, President
New Hampshire School Counselor Assoc.
Timberlane Regional High School
P.O. Box 466
Plaistow, NH 03865

NEW JERSEY -

Several attempts have been made by the New Jersey Personnel and Guidance Association to have privileged communications bills passed through the state legislature. New legislative bills are currently being developed in this area which relate to both student records and counseling.

Contact Person - Steve Bodnarchuk, Past President
New Jersey Personnel and Guidance Assoc.
7 Onka Drive
Somerville, NJ 08876

NEW YORK -

A privileged communications bill, limited to communications between student drug users and designated school personnel passed the Senate and the Assembly in 1973. The Governor vetoed this legislative action.

For two years the Regents for Legislative Action recommended the passage of "Bills on Privileged Communications for Designated School Personnel. The Regents' recommendation for 1974 was dropped.

AN ACT TO AMMEND THE CIVIL PRACTICE LAW AND RELES, IN RELATION TO CONFIDENTIAL COMMUNICATIONS BETWEEN PUPILS AND CERTAIN SCHOOL PERSONNEL. SECTION 4509. SCHOOL PERSONNEL. A SCHOOL PSYCHOLOGIST, GUIDANCE COUNSELOR AND SUCH TEACHERS WITHIN ANY PUBLIC SCHOOL DULY CERTIFIED UNDER THE PROVISIONS OF THE EDUCATION LA', AS SHALL BE EXPRESSLY DESIGNATED BY THE PRINCIPAL OF SUCH SCHOOL UPON WRITTEN NOTICE TO THE COMMISSIONER OF EDUCATION, SHALL NOT BE REQUIRED TO DISCLOSE A COMMUNICATION MADE BY A PUPIL TO HIM IN HIS PROFESSIONAL CAPACITY, OR HIS ADVICE GIVEN THEREON, CONCERNING THE USE OR POSSESSION OF A DRUG IN VIOLATION OF LAW, EXCEPT WHERE THE PUPIL WAIVES THE PRIVILEGE HEREIN CONFERRED.

Contact Person - Joseph J. Gerdin, Ed.D
Associate in Guidance
State Department of Education
Albany, NY 12224

NEW MEXICO -

(Did not respond to survey)

NORTH CAROLINA - After three years of "concentrated" efforts by the North Carolina Personnel and Guidance Association Legislative Committee, AN ACT FOR PRIVILEGED COMMUNICATIONS BETWEEN STUDENTS AND SCHOOL COUNSELORS passed into law. The law was enacted in 1971 and establishes privileged communication between students and school counselors. A judge may compel disclosure in the interest of justice.

N. C. STATUTE 8-53.4 NO PERSON CERTIFIED BY THE STATE DEPARTMENT OF PUBLIC INSTRUCTION AS A SCHOOL COUNSELOR AND DULY APPOINTED OR DESIGNATED AS SUCH BY THE GOVERNING BODY OF A PUBLIC SCHOOL SYSTEM WITHIN THIS STATE OR BY THE HEAD OF ANY PRIVATE SCHOOL WITHIN THIS STATE SHALL BE COMPETENT TO TESTIFY IN ANY ACTION, SUIT, OR PROCEEDING CONCERNING ANY INFORMATION ACQUIRED IN RENDERING COUNSELING SERVICES TO ANY STUDENT ENROLLED IN SUCH PUBLIC SCHOOL SYSTEM OR PRIVATE SCHOOL, AND WHICH INFORMATION WAS NECESSARY TO ENABLE HIM TO RENDER COUNSELING SERVICES; PROVIDED, HOWEVER, THAT THIS SECTION SHALL NOT APPLY WHERE THE STUDENT IN OPEN COURT WAIVES THE PRIVILEGE CONFERRED; PROVIDED FURTHER THAT THE PRESIDING JUDGE MAY COMPEL SUCH DISCLOSURE, IN HIS OPINION THE SAME IS NECESSARY TO A PROPER ADMINISTRATION OF JUSTICE.

Contact Person - Dr. Alice T. Solomon, Guidance Consultant, Division of Pupil Personnel Services, Department of Public Instruction, State of North Carolina Raleigh, NC 27611

Also -

Mrs. Charlotte S. Cole, President
North Carolina School Counselor Assoc.
Rte. 1, Box 72
Blowing Rock, NC 28605

NORTH DAKOTA - Currently on the books is a law enacted in 1969 which makes certified school counselors immune from disclosing privileged communications information.

CHAPTER 309 SCHOOL COUNSELORS IMMUNE FROM DISCLOSING PRIVILEGED INFORMATION. 31-01-06.1 COUNSELORS SHALL BE IMMUNE FROM DISCLOSING INFORMATION GIVEN BY PUPILS. FOR THE PURPOSE OF COUNSELING IN A SCHOOL SYSTEM, ANY ELEMENTARY OR SECONDARY SCHOOL COUNSELOR POSSESSING A VALID NORTH DAKOTA GUIDANCE CREDENTIAL FROM THE DEPARTMENT OF EDUCATION, AND WHO HAS BEEN DULY APPOINTED A COUNSELOR FOR A SCHOOL SYSTEM BY ITS PROPER AUTHORITY, SHALL BE LEGALLY IMMUNE FROM DISCLOSING ANY PRIVILEGED OR CONFIDENTIAL COMMUNICATION MADE TO SUCH COUNSELOR IN A COUNSELING INTERVIEW. SUCH COMMUNICATION SHALL BE DISCLOSED WHEN REQUESTED

BY THE COUNSELEE.

Contact Person - June E. Beck, Counselor
Mandan High School
Mandan, ND 58544

Also -

Dr. Glenn R. Dolsu, Division of
Guidance Services
Department of Public Instruction
Bismarck, ND 58501

OHIO -

No legislation exists in the State of Ohio which relates to privileged communications for school counselors. The Ohio School Counselor Association has been working through legislative channels to secure protection for counselors in areas of confidentiality. (No other information has been provided at the time of this writing.)

Contact Person - Dr. Irene G. Bandy, Consultant
Guidance Counseling and Development
Services
Ohio Department of Education
Columbus, OH 43212

OKLAHOMA -

Attorneys have ruled that privileged communications are covered under Oklahoma School Law for school counselors as well as for teachers.

SECTION 94. INFORMATION CONCERNING PUPIL. IT SHALL BE UNLAWFUL AND A MISDEMEANOR FOR ANY TEACHER TO REVEAL ANY INFORMATION CONCERNING ANY CHILD OBTAINED BY HIM IN HIS CAPACITY AS TEACHER EXCEPT AS MAY BE REQUIRED IN THE PERFORMANCE OF HIS CONTRACTUAL DUTIES, EXCEPT SAID INFORMATION MAY BE FURNISHED TO THE PARENT OR GUARDIAN OF SAID CHILD UPON REQUEST.

Contact Person - Dr. Blane E. Sandlin, Administrator
Guidance and Counseling
State Department of Education
Oklahoma City, OK 73105

OREGON -

Statutes provide for confidential pupil records. Communications between certificated staff members and students which relates to the personal affairs of the student or his family are also confidential. There is provision for release of information in cases of expected child abuse.

SECTION 4. ORS 44.040 (1) THERE ARE PARTICULAR RELATIONS IN WHICH IT IS THE POLICY OF THE LAW TO ENCOURAGE CONFIDENCE, AND TO PRESERVE IT INVIOATE; THEREFORE, A PERSON CANNOT BE EXAMINED AS A WITNESS IN THE FOLLOWING CASES:

1. A CERTIFICATED STAFF MEMBER OF AN ELEMENTARY OR SECONDARY SCHOOL SHALL NOT BE EXAMINED IN ANY CIVIL ACTION, SUIT OR PROCEEDING, AS TO ANY CONVERSATION BETWEEN THE CERTIFICATED STAFF MEMBER AND A STUDENT WHICH RELATES TO THE PERSONAL AFFAIRS OF THE STUDENT OR HIS FAMILY, AND WHICH IF DISCLOSED WOULD TEND TO DAMAGE OR INCRIMINATE THE STUDENT OR HIS FAMILY. ANY VIOLATION OF THE PRIVILEGE PROVIDED BY THIS SECTION MAY RESULT IN THE SUSPENSION OF CERTIFICATION OF THE PROFESSIONAL STAFF MEMBER AS PROVIDED IN ORS 342.175.....

2. IF A PARTY TO THE ACTION, SUIT OR PROCEEDINGS OFFERS HIMSELF AS A WITNESS, IT IS DEEMED A CONSENT TO THE EXAMINATION ALSO OF A WIFE, HUSBAND, ATTORNEY, CLERGYMAN, PHYSICIAN OR SURGEON, STENOGRAPHER, LICENSED PROFESSIONAL NURSE, OR CERTIFIED PSYCHOLOGIST OR CERTIFICATED STAFF MEMBER ON THE SAME SUBJECT.

SECTION 5. ANY CATEGORY OF STUDENT RECORDS SPECIFICALLY DESIGNATED AS CONFIDENTIAL PURSUANT TO SECTION 2 OF THIS ACT SHALL NOT BE DEEMED A PUBLIC RECORD....

Contact Person - Dr. Leslie L. Adkins, Director
Student Services
Oregon State Department of Education
942 Lancaster Drive, NE
Salem, OR 97310

PENNSYLVANIA -

ACT 287, passed into law in December of 1972, provides for privileged communications for counselors, nurses, school psychologists and their secretaries. This legislation resulted from the efforts of the Pennsylvania School Counselor Association and the Pennsylvania State Education Association.

ACT 287, Section 1319: CONFIDENTIALITY OF STUDENT COMMUNICATIONS NO GUIDANCE COUNSELOR, SCHOOL NURSE OR SCHOOL PSYCHOLOGIST IN THE PUBLIC SCHOOLS OR IN PRIVATE OR PAROCHIAL SCHOOLS OR OTHER EDUCATIONAL INSTITUTIONS PROVIDING ELEMENTARY OR SECONDARY EDUCATION, INCLUDING ANY CLERICAL WORKER OF SUCH SCHOOLS AND INSTITUTIONS, WHO, WHILE IN THE COURSE OF HIS PROFESSIONAL DUTIES FOR A GUIDANCE COUNSELOR, SCHOOL NURSE OR SCHOOL PSYCHOLOGIST, HAS ACQUIRED INFORMATION FROM A STUDENT IN CONFIDENCE SHALL BE COMPELLED OR

ALLOWED WITHOUT THE CONSENT OF THE STUDENT, IF THE STUDENT IS EIGHTEEN YEARS OF AGE OR OVER, OR IF THE STUDENT IS UNDER THE AGE OF EIGHTEEN YEARS, WITHOUT THE CONSENT OF HIS OR HER PARENT OR LEGAL GUARDIAN, TO DISCLOSE THAT INFORMATION IN ANY LEGAL PROCEEDING, CIVIL OR CRIMINAL, TRAIL, INVESTIGATION BEFORE ANY GRAND, TRAVERSE OR PETIT JURY, OR ANY OFFICERS THEREOF, BEFORE THE GENERAL ASSEMBLY OR ANY COMMITTEE THEREOF, OR BEFORE ANY COMMISSION, DEPARTMENT OF BUREAU OF THE COMMONWEALTH, OR MUNICIPAL BODY, OFFICER OR COMMITTEE THEREOF, NOTWITHSTANDING THE CONFIDENTIALITY PROVISION OF THIS SECTION, NO SUCH PERSON SHALL BE EXCUSED OR PREVENTED FROM COMPLYING WITH THE ACT OF AUGUST 14, 1967.

The ACT also provides for release of information in cases of child abuse. Penalties are provided for failure to do so.

Contact Person - David W. Fluke, Director of Guidance
Springfield High School
Springfield, PA 19064

RHODE ISLAND -

There are no current laws in Rhode Island granting privileged communications to school counselors. The committee has been advised by the contact person that only the attorneys-at-law enjoy the privilege, then with some exceptions. There appears to be little support in the State for legislation related to confidential communications.

Contact Person - Dr. Eileen A. Matteo, Regulatory Functions Unit, Rhode Island Department of Education, Hayes Street
Providence, RI 02908

SOUTH CAROLINA -

Information from this state is incomplete. It appears that there is a limited privileged communications statute on the books.

NO. 445, SOUTH CAROLINA STATUTES AT LARGE.
SECTION 5, 1971. IMMUNITY FOR CERTAIN DRUG ADDICTS. ANY PERSON ADDICTED TO OR DEPENDENT UPON NARCOTICS OR DANGEROUS DRUGS MAY SEEK ADVICE CONCERNING SUCH PROBLEM, AND INFORMATION AS TO WHERE HE MAY OBTAIN TREATMENT AND REHABILITATION FROM A MEDICAL PRACTITIONER OR HOSPITAL, A COLLEGE OR UNIVERSITY COUNSELING BUREAU OR GUIDANCE COUNSELORS IN ELEMENTARY, JUNIOR AND HIGH SCHOOLS WITHOUT FEAR OF ARREST OR OF BEING REPORTED TO LAW ENFORCEMENT AUTHORITIES FOR PROSECUTION AS A DRUG LAW VIOLATOR.

Contact Person - Jane Lawther, Career Education
Coordinator, Dent Junior High Sch.
2719 Decker Blvd.
Columbia, SC 29206

SOUTH DAKOTA -

Enacted in 1972 was "AN ACT RELATING TO THE ESTABLISHMENT OF PRIVILEGED COMMUNICATIONS AND INFORMATION WHEN GIVEN TO A SCHOOL COUNSELOR BY A STUDENT." An amendment to the current statute may be developed by the South Dakota Personnel and Guidance Association.

CHAPTER 131, SESSION LAWS OF 1972, SDCL 19-2-5.1
NO COUNSELOR, CERTIFICATED IN ACCORDANCE WITH THE
CERTIFICATION REGULATIONS OF THE STATE BOARD OF
EDUCATION AND REGULARLY EMPLOYED AS COUNSELOR FOR
A PRIVATE OR PUBLIC ELEMENTARY OR SECONDARY SCHOOL
OR SCHOOL SYSTEM IN THE STATE OF SOUTH DAKOTA, MAY
DIVULGE TO ANY OTHER PERSON, OR BE EXAMINED CONCERN-
ING ANY INFORMATION OR COMMUNICATION GIVEN TO HIM IN
HIS OFFICIAL CAPACITY BY A STUDENT UNLESS:
1. THIS PRIVILEGE IS WAIVED IN WRITING BY THE STUDENT;
OR
2. THE INFORMATION OR COMMUNICATION WAS MADE TO THE
COUNSELOR FOR THE EXPRESS PURPOSE OF BEING COMMUNI-
CATED OR OF BEING MADE PUBLIC.

Contact Person - Dr. Richard D. Parker, Administrator
Guidance and Counseling Services
South Dakota Department of Public
Instruction
Pierre, SD 57501

TENNESSEE -

The State of Tennessee does not have a law giving the school counselor and the counselee privileged communications. At present the Tennessee Personnel and Guidance Association legislative committee is developing a bill which would provide for confidential communications for students.

Contact Person - Dr. Luther Parker, Director of Counsel-
ing, Christian Brothers High School
5900 Walnut Grove Road
Memphis, TN 38138

TEXAS -

Legislation sought during the last session of the Texas Legislature passed only in the House of Representatives. The legislative efforts were through the cooperation of the Texas School Counselor Association, the Texas Personnel and Guidance Association, and the Texas State Teachers Association. The bill will probably be introduced during the next session in 1975.

A BILL ENTITLED AN ACT PROHIBITING THE GIVING OF EVIDENCE IN CRIMINAL ACTIONS OR PROCEEDINGS BY ANY COUNSELOR IN ANY ELEMENTARY OR SECONDARY PUBLIC SCHOOL OF A COMMUNICATION MADE TO THE COUNSELOR BY A STUDENT WHICH COMMUNICATION TENDS TO INCRIMINATE THE STUDENT: PROVIDING THAT A COUNSELOR IN ANY ELEMENTARY OR SECONDARY PUBLIC SCHOOL SHALL NOT BE REQUIRED TO DISCLOSE THE SOURCE AND CONTENT OF CERTAIN COMMUNICATIONS, DEFINING CERTAIN WORDS, REPEALING OR MODIFYING ALL LAWS IN CONFLICT HERewith, AND DECLARING AN EMERGENCY.

SECTION 1. NO COUNSELOR IN ANY ELEMENTARY OR SECONDARY PUBLIC SCHOOL IN THIS STATE SHALL BE REQUIRED IN ANY CRIMINAL ACTION TO GIVE EVIDENCE CONCERNING A COMMUNICATION MADE TO THE COUNSELOR BY A STUDENT ENROLLED IN THE SCHOOL DISTRICT IN WHICH THE COUNSELOR IS EMPLOYED OR ASSIGNED IS SUCH COMMUNICATION TENDS TO INCRIMINATE THE STUDENT.

SECTION 2. A COUNSELOR IN ANY ELEMENTARY OR SECONDARY PUBLIC SCHOOL IN THIS STATE SHALL NOT BE REQUIRED IN ANY CRIMINAL OR CIVIL ACTION TO DISCLOSE THE SOURCE AND CONTENT OF A COMMUNICATION MADE IN CONFIDENCE TO THE COUNSELOR BY A STUDENT ENROLLED IN THE SCHOOL DISTRICT IN WHICH THE COUNSELOR IS EMPLOYED OR ASSIGNED....

Contact Person - Mr. Bob Keck, Assistant Director
Governmental Relations, Texas State
Teachers Association, 316 West
Twelfth Street, Austin, TX 78701

Also -

D.G. Bahlinger, S.J., Chairman Texas
School Counselor Association
Legislation Committee, P.O. Box 36349
Houston, TX 77036

UTAH -

There are no laws relating to privileged communications for school counselors, or other pupil personnel workers in Utah. A privileged communications bill was killed during the 1973 session of the legislature.

AN ACT AMENDING SECTION 78-24-8, UTAH CODE ANNOTATED 1953: PROVIDING FOR PROTECTION OF PRIVILEGED INFORMATION GIVEN TO CERTAIN SCHOOL PERSONNEL BY STUDENTS IN THE PUBLIC AND PRIVATE SCHOOLS AND OTHER EDUCATIONAL INSTITUTIONS OF THE STATE OF UTAH; AND PROVIDING FOR AN EFFECTIVE DATE.

78-24-8. THERE ARE PARTICULAR RELATIONS IN WHICH IT IS THE POLICY OF THE LAW TO ENCOURAGE CONFIDENCE AND TO PRESERVE IT INVIOLEATE. THEREFORE, A PERSON CANNOT BE EXAMINED AS A WITNESS IN THE FOLLOWING CASSES:

....(6) ANY CERTIFICATED COUNSELOR, PSYCHOLOGIST OR SOCIAL WORKER, DULY APPOINTED, REGULARLY EMPLOYED AND DESIGNATED IN SUCH CAPACITY BY ANY PUBLIC OR PRIVATE SCHOOL OR OTHER EDUCATIONAL INSTITUTION IN THIS STATE, FOR THE PURPOSE OF COUNSELING STUDENTS, CANNOT WITHOUT THE CONSENT OF THE STUDENT, BE EXAMINED AS TO ANY COMMUNICATION MADE BY THE STUDENT TO HIM, OR HIS ADVICE GIVEN THEREIN IN THE COURSE OF HIS PROFESSIONAL COUNSELING WITH A STUDENT. IF THE CHILD IS UNDER THE AGE OF 14 THE CONSENT OF THE CHILD'S PARENTS OR GUARDIAN SHALL ALSO BE REQUIRED BEFORE THE CONFIDENTIAL COMMUNICATION CAN BE REVEALED.

Contact Person - Mrs. Jean Taylor, President-Elect
Utah Personnel and Guidance
Department of the Utah Education
Association, Jordan School District
9361 S. 400 East Sandy, UT 84070

VERMONT -

(Did not respond to survey)

VIRGINIA -

Virginia does not have a privileged communications Statute. A bill to provide for privileged communications was introduced in the Genreal Assembly of Virginia in 1970 but died in committee. The Virginia Education Association, in its 1974 Program Action statement, will recommend that the State Board of Education pursue legislation to protect all professional school personnel for privileged communication. There are no current plans for the introduction of a bill this year.

(1970 Bill) A BILL TO AMMEND THE CODE OF VIRGINIA BY ADDING A SECTION NUMBERED 8-289.3 MAKING COMMUNICATIONS BETWEEN COUNSELORS OF STUDENTS AND PERSONS THEY COUNSEL OR ADVISE PRIVILEGED.

S 8-289.3. NO COUNSELOR DULY APPOINTED OR DESIGNATED A COUNSELOR FOR AN EDUCATIONAL INSTITUTION USUALLY REFERRED TO AS A SCHOOL, COLLEGE OR UNIVERSITY BY ITS PROPER OFFICERS FOR THE PURPOSE OF COUNSELING PUPILS IN SUCH EDUCATIONAL INSTITUTION SHALL BE REQUIRED IN GIVING TESTIMONY AS A WITNESS IN ANY CIVIL ACTION TO DISCLOSE ANY INFORMATION WRITTEN OR UNWRITTEN COMMUNICATED TO HIM IN HIS PROFESSIONAL CAPACITY AND NECESSARY TO ENABLE HIM TO DISCHARGE THE FUNCTIONS OF HIS OFFICE ACCORDING TO THE USUAL COURSE OF HIS PRACTICE OR DISCIPLINE, WHEREIN SUCH PERSON SO COMMUNICATING SUCH INFORMATION ABOUT HIMSELF OR ANOTHER IS SEEKING EDUCATIONAL OR CAREER COUNSEL AND ADVICE RELATIVE TO AND GROWING OUT OF THE INFORMATION SO IMPARTED.

Contact Person - Miss Gertrude D. Lewis, Assistant
Supervisor of Guidance Services
Virginia State Board of Education
Box 600
Warrenton, VA 22186

Also -

Paul E. Behrens, Ed.D., Chairman
Legislative Committee, Virginia
Personnel and Guidance Association
8905 Wishart Road, Richmond, VA 23229

WASHINGTON -

Communications between certificated school counselors and student drug and alcohol users were "guaranteed confidential" in 1971. Counselor certification apparently started after the below mentioned statute passed the legislature.

SECTION 9, CHAPTER 304, LAWS OF 1971. (in part)
69.54.070 CONFIDENTIALITY. WHEN AN INDIVIDUAL SUBMITS HIMSELF FOR CARE, TREATMENT, COUNSELING, OR REHABILITATION TO ANY ORGANIZATION, INSTITUTION OR CORPORATION, PUBLIC OR PRIVATE, APPROVED PURSUANT TO THIS 1971 AMENDATORY ACT, OR ANY PERSON LICENSED OR CERTIFIED BY THE STATE WHOSE PRINCIPAL FUNCTION IS THE CARE, TREATMENT, COUNSELING OR REHABILITATION OF ALCOHOL ABUSERS OR USERS OF NARCOTIC OR DANGEROUS DRUGS, OR THE PROVIDING OF MEDICAL, PSYCHOLOGICAL OR SOCIAL COUNSELING OR TREATMENT, NOTWITHSTANDING ANY OTHER PROVISION OF LAW, SUCH INDIVIDUAL IS HEREBY GUARANTEED CONFIDENTIALITY. NO SUCH PERSON, ORGANIZATION INSTITUTION OR CORPORATION OR THEIR AGENTS ACTING IN THE SCOPE AND COURSE OF THEIR DUTIES, PROVIDING SUCH CARE, TREATMENT, COUNSELING OR REHABILITATION SHALL DIVULGE NOR SHALL THEY BE REQUIRED TO PROVIDE ANY SPECIFIC INFORMATION CONCERNING INDIVIDUALS BEING CARED FOR, TREATED, COUNSELED OR REHABILITATED.

Contact Person - Marjorie M. Anderson, Supervisor of
Pupil Personnel Services, Washington
Department of Education, Old Capitol
Bldg., Olympia, WA 98504

WEST VIRGINIA - The West Virginia Personnel and Guidance Association has for the past two years submitted legislation seeking to obtain privileged communications for school counselors in the state. Bothe years the bill was defeated, one year on the floor of the senate; the subsequent year in committee. The bill was submitted in January of this year, in the third attempt for passage through the legislature. Current status is not available at this printing.

ARTICLE 5. AUTHORITY; RIGHTS; RESPONSIBILITY.
SECTION 18A-5-8. PRIVILEGED COMMUNICATIONS.
CONVERSATIONS BETWEEN ANY SCHOOL COUNSELOR AND A PUPIL IN ANY ELEMENTARY OR SECONDARY SCHOOL, PUBLIC OR PRIVATE, CONDUCTED IN A PROFESSIONAL CAPACITY AND RECORDS PERTAINING TO SUCH CONVERSATIONS ARE PRIVILEGED AND AS SUCH MAY NOT BE DISCLOSED OR ASSERTED EXCEPT IN ANY ACTION BROUGHT BY THE PUPIL AGAINST SUCH COUNSELOR BASED UPON THE RELATIONSHIP OF THAT OFFICIAL IN HIS PROFESSIONAL CAPACITY WITH THE PUPIL.

THE PRIVILEGE IS WAIVED IN ANY INSTANCE WHERE LIFE IS ENDANGERED, WHERE THE PUPIL CONSENTS TO DISCLOSURE, WHERE HE MAKES THE DISCLOSURE HIMSELF IN ANY CIVIL OR CRIMINAL ACTION OR WHERE HE DISCLOSES THE SUBSTANCE OF SUCH COMMUNICATION OR RECORD TO ANY THIRD PARTY OTHER THAN HIS PARENT, GUARDIAN OR PROFESSIONAL PERSON TO WHICH A PRIVILEGE ATTACHES.

THE PRIVILEGE SPECIFIED IN THIS SECTION DOES NOT ATTACH TO RECORDS OR PORTIONS OF RECORDS WHICH RELATE ONLY TO THE ACADEMIC ACCOMPLISHMENTS OF THE PUPIL.

THE TERM "SCHOOL COUNSELOR" AS USED IN THIS SECTION MEANS ANY PROFESSIONAL EDUCATOR CERTIFIED BY THE STATE DEPARTMENT OF EDUCATION AS A COUNSELOR AND FUNCTIONING AS SUCH COUNSELOR.

Contact Person - Dr. Keith C. Smith, Director
Guidance Services, West Virginia
Department of Education, Charleston,
West VA. 25305

Also -

Miss Billie Davis, Chairperson
Legislation Action Committee
West Virginia Personnel and Guidance
Association, Dunbar Junior High Sch.
Dunbar, West VA.

WISCONSIN -

An attempt to achieve passage of an amendment to existing privileged communications laws failed to pass the Wisconsin Assembly during the past session. The existing law provides for a limited communications privilege for deans at institutions of higher learning and school psychologists at any school. The amendment would have added school counselors to the law. There are no current moves to revive the legislative efforts for school counselors.

(Proposed amendment)

885.205 PRIVILEGED COMMUNICATIONS. (1) NO DEAN OF MEN, DEAN OF WOMEN, DEAN OF STUDENTS OR SCHOOL COUNSELOR CERTIFIED BY THE DEPARTMENT OF EDUCATION IN THIS STATE, OR ANY SCHOOL COUNSELOR CERTIFIED BY THE DEPARTMENT OF PUBLIC INSTRUCTION AS A SCHOOL COUNSELOR AT ANY SCHOOL IN THIS STATE, OR ANY SCHOOL PSYCHOLOGIST OR SCHOOL SOCIAL WORKER OR OTHER PERSON DESIGNATED BY THE SCHOOL BOARD TO PROVIDE COUNSELING AT ANY SCHOOL IN THIS STATE, SHALL BE ALLOWED TO DISCLOSE COMMUNICATIONS MADE TO HIM OR ADVICE GIVEN BY HIM IN THE COURSE OF COUNSELING A STUDENT, OR IN THE COURSE OF INVESTIGATING THE CONDUCT OF A STUDENT ENROLLED AT SUCH UNIVERSITY OR SCHOOL, EXCEPT:

- (a) THIS PROHIBITION MAYBE WAIVED BY THE STUDENT.
- (b) THIS PROHIBITION DOES NOT INCLUDE COMMUNICATIONS WHICH SUCH DEAN, COUNSELOR, PSYCHOLOGIST, SOCIAL WORKER OR OTHER DESIGNATED PERSON NEEDS TO DIVULGE FOR HIS OWN PROTECTION, OR THE PROTECTION OF THOSE WITH WHOM HE DEALS, OR WHICH WERE MADE TO HIM FOR THE EXPRESS PURPOSE OF BEING COMMUNICATED TO ANOTHER, OR OF BEING MADE PUBLIC.
- (c) THIS PROHIBITION DOES NOT EXTEND TO A CRIMINAL CASE WHEN SUCH DEAN, COUNSELOR, PSYCHOLOGIST, SOCIAL WORKER OR OTHER DESIGNATED PERSON HAS BEEN REGULARLY SUBPOENAED TO TESTIFY.
- (2) IN THIS SECTION "COUNSELOR" OR "SCHOOL COUNSELOR" MEANS A PERSON WHO IS PROFESSIONALLY TRAINED IN COUNSELING OR PSYCHOLOGY, WHO IS RESPONSIBLE TO A DEAN OF STUDENTS, VICE PRESIDENT FOR STUDENT AFFAIRS, PRINCIPAL OR SIMILAR OFFICER AND IS DESIGNATED BY HIM TO FUNCTION AS A COUNSELOR AND WHO DOES NOT FUNCTION IN AN AUTHORITARIAN, DISCIPLINARY OR ADMINISTRATIVE ROLE IN RELATION TO STUDENTS.

Contact Person - Mr. William J. Erpenbach, Consultant
Counseling and Guidance, Wisconsin
Department of Public Instruction, 126
Langdon St., Madison, WI 53702

WYOMING -

Wyoming does not have any law which provides a communication privilege between students and their guidance personnel. Limited privilege communications exists pertaining to school records (only a student, his parents, and his school officials can look at a student's records).

Wyoming has no legislative bills now pending with regard to this type of communications privilege, (between student and counselor) nor has it had bills in the past that have been killed for lack of support.

Contact Person - Jim Anderson, Coordinator Career
Guidance and Secondary Counseling
Wyoming Department of Education
Cheyenne, WY 82002

Also -

Barbara A. Erickson, Law Clerk
State Department of Education
Cheyenne, WY 82002

A PROPOSED MODEL PRIVILEGED COMMUNICATIONS LAW developed by the ASCA Political Action Committee for the American Personnel and Guidance Association. The Committee developed three model bills, model 1 and 2 are written from the point of view of protecting the student while model 3 is written more for the counselor.

The PROPOSED MODELS are yet to be approved and are only presented here for the benefit of the reader. More complete information should be obtained from the committee chairperson.

MODEL LAW #1 AN ACT

Relating to the confidential relationship of the students of (state) and the endorsed counselors of public, private or parochial schools.

(Preamble) if needed.

(Enacting Clause) as needed by the state.

(Short Title) This act may be cited as the Act of _____.

(Policy Section) if needed.

(Definitions) Each state's school laws have their own definitions which are necessary, i.e. certified, licensed, certificated or endorsed counselor.

Be it enacted that:

All students enrolled in a school system shall be protected from disclosure in any action, suit, or proceeding of communications given in confidence to a person certified by the State Department of Education as a school counselor and duly appointed or designated a school counselor for the school system by its proper officers. However, this section shall not apply where the student waives the privilege conferred.

NOTES:

1. The statement "communications in confidence" is conceived to include one or more counselors working with several students in group counseling as well as individual counseling.
2. The term "enrolled" would include students previously enrolled or students planning such enrollement with whom a counseling relationship has been established.

MODEL LAW #2 AN ACT

(see section in MODEL LAW #1, "AN ACT")

Be it enacted that:

Students shall be protected from disclosure of communications given to a person certified by the State Department of Education as a school counselor and duly appointed or designated a school counselor for the school system by its proper officers, for the purpose of counseling students enrolled in such school system. This school counselor shall not be competent to testify in any action, suit, or proceeding concerning information acquired in rendering counseling services. Such communications must originate in confidence and do not include those made in the presence of third parties not covered by the statute. However, this section shall not apply where the student in open court waives the privilege conferred or if the communication concerns future crimes.

NOTES:

1. "Counseling services" shall include individual, co-counselor, and group counseling situations.
2. The term "enrolled" would include students previously enrolled or students planning such enrollment with whom a counseling relationship has been established.

MODEL LAW #3

AN ACT

(see section in MODEL LAW #1 "AN ACT")

Be it enacted that:

No person certified by the State Department of Education as a school counselor and duly appointed or designated a school counselor for the school system by its proper officers, for the purpose of counseling students enrolled in such school system, shall not be competent to testify in any action, suit, or proceeding concerning information acquired in rendering counseling services. Such communications must originate in confidence and do not include those made in the presence of third parties not covered by the statute. However, this section shall not apply where the student in open court waives the privilege conferred or in the communication concerns future crimes.

NOTES:

1. "Counseling services" shall include individual, co-counselor, and group counseling situations.
2. The term "enrolled" would include students previously enrolled or students planning such enrollment with whom a counseling relationship has been established.

The above draft models were put together for APGA Committee examination, previous to any approval of a MODEL LAW. Information may be requested from Ms. Mardelle Parkinson, Chairperson, ASCA Political Action Committee, Arbor Heights Junior High School, 8601 Arbor, Omaha, NB 68124

SOURCES FOR FURTHER INFORMATION

Doctoral Students Who Have Been In Contact With The Committee.

Mr. John Eisele, 3904 N.W. 13th Street, Gainesville, FL 32601

Research is in the area of ethical-conflict situations, especially as it relates to confidential information.

Miss Margaret E. Ferqueron, 781 El Rancho Street, Tallahassee, FL 32304

Research includes information from questionnaires about the needs for privileged information in the states. Examples of court cases are asked for.

J. Kent Larkin, P.O. Box 7275, University Station, Provo, UT 84602

A member of a State of Utah task force researching counselor legislation pertaining to confidentiality and privileged communications.

Published Materials:

Counselor Certification 1971: Jack Thorsen, Ph.D. American Personnel and Guidance Association, Washington, D.C. 20009 (has notes of privileged communications).

Ethics in Counseling-Problem Situations: Harley D. Christiansen, University of Arizona Press, Tucson, AZ 85721

Legal Aspects of Student Records: Henry E. Butler, Jr., K.D. Moran, Floyd A. Vanderpool, Jr., NOLPE, 825 Western Avenue, Topeka, KS 66606.

Future Developments of the Law of Guidance Counseling: Jacob C. Diemert, Esq., Massachusetts School Counselors Association, 22 Constitution Road, Lexington, MA 02173

Bibliography on the Ethical Responsibilities and Legal Status of Counselors;

American Personnel and Guidance Association, Professional Information Specialist, Washington, D.C. 20009

Appendix 6.

A BILL OF RIGHTS *

We hold these truths inalienable for all children:

- ONE: The Right to Be Born Wanted.
- TWO: The Right to Be Born Healthy.
- THREE: The Right to Live in a Healthful Environment.
- FOUR: The Right to Live in a Family Whose Basic Economic Needs Are Met.
- FIVE: The Right to Continuous and Loving Care both at Home and in School.
- SIX: The Right to Acquire Intellectual and Emotional Skills for Effective Citizenship.
 - a. The Right to Dignity in School.
 - b. The Right to Humane and Concerned Treatment Under the Law and by Courts.
 - c. The Right to Child-Centered Divorce and Custody Laws.
- SEVEN: The Right to Meaningful Employment.
- EIGHT: The Right to Diagnostic, Treatment, and Rehabilitative Care through Facilities which are Appropriate to Children's Special Needs and Which Keep Them as Closely as Possible within Their Normal Social Setting.
- NINE: The Right to Racial and Ethnic Identity, Self-Determination, and a Real and Functional Equality of Opportunity to the Above Rights.
- TEN: The Right to Political Participation through Education for Informed Citizenship.

* In part, derived from the rights developed by the Joint Commission on Mental Health of Children, 1967. See Advocacy for Child Mental Health by Irving N. Berline (Brunner/Mazel, New York 1975) for a comprehensive discussion.

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4. Greenwood, E. Attributes of a profession. In R. M. Pavalko (Ed.) Sociological perspectives on occupations. Itasca, IL.: F. E. Peacock, 1972.
5. Litwack, L. Testimonial privileges communication: A problem reexamined. School Counselor, 1975, 22, 194-196.
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7. Robinson, R. T. Legislative guidelines for the professionalization of school counselors. Dallas, Tx.: Southern Methodist University, 1971. (ERIC Document Reproduction Service No. ED 056 315)
8. Stude, E. W. & Goodyear, D. L. Ethics and the counselor. Fullerton, Ca.: California Personnel & Guidance Association, 1975.